

SEVENTY-FOURTH DAY
(Friday, May 26, 1989)

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Farmer, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

Senator Zaffirini offered the invocation as follows:

Dear Lord, we call upon You in these closing days of the session once more to petition You to inspire us and to guide us as we try our best to make the best possible decisions for the people of Texas. And Lord, today we come to You with a special petition to gather Your forces not only around us, but also to gather Your angels around our loved ones: our spouses, our parents, our children. Our prayer for You today, dear Lord, is to ask You that You keep our families happy, healthy and holy and that You stay by our side until sine die.

We ask all this in the name of Jesus, Your Son. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Parker submitted the following report for the Committee on Education:

S.C.R. 173
H.B. 1498
H.B. 2625

Senator Montford submitted the following report for the Committee on State Affairs:

H.B. 2745
C.S.H.B. 2033
H.B. 2644
H.B. 2609
H.B. 2420 (Amended)
H.B. 1182
H.B. 1217
H.B. 2728
H.B. 2542
H.B. 44
H.B. 182
H.B. 2887
H.B. 1576
H.B. 3031
H.B. 1654
H.J.R. 32

C.S.H.B. 863
H.B. 240 (Amended)

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 2377
H.B. 1569
H.C.R. 236
H.B. 721

Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 291
C.S.H.B. 3042

COMMITTEE APPOINTMENT

In accordance with the provisions of S.C.R. 2, the President announced the appointment of Senate members to the Joint Committee to Select the State Artist: Senators Parker, Chairman; Dickson and Lyon.

SENATE RESOLUTIONS ON FIRST READING

On motion of Senator Edwards and by unanimous consent, the following resolutions were introduced, read first time and referred to the Committee indicated:

S.R. 763 by Edwards Administration
Creating a select interim committee to study means by which higher education may be made more affordable to Texans.

S.R. 761 by Johnson, Edwards Administration
Directing the Committee on Nominations to prepare a formal study of gubernatorial appointments currently authorized by statute.

S.R. 764 by Zaffrini Health and Human Services
Encouraging the Inter-agency Council on Mentally Retarded, Developmentally Disabled and Mentally Ill Offenders to cooperate with the Texas Department of Mental Health and Mental Retardation.

S.R. 766 by Glasgow Administration
Creating the Special Committee on Divorce Policies and Procedures.

CO-AUTHOR OF SENATE RESOLUTION 746

On motion of Senator Johnson and by unanimous consent, Senator Caperton will be shown as Co-author of S.R. 746.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to the House amendments to S.B. 237.

SENATE BILL 237 WITH HOUSE AMENDMENTS

Senator Glasgow called S.B. 237 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.
Committee Amendment - Madla

Amend S.B. 237 by striking all below the enacting clause and substituting the following:

SECTION 1. Amend Section 3(c) of Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

Section 3(c). Five (5) members of the Board shall constitute a quorum. ~~[No school shall ever have a majority representation on the Board.]~~ No member of said Board shall be a stockholder, or have any financial interest whatsoever in any chiropractic school or college.

SECTION 2. Amend Section 8a of Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

Section 8a. (a) Practicing chiropractic as defined in Section 1 of this Act without an annual registration receipt for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing chiropractic without a license.

(b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not longer than ninety (90) days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for longer than ninety (90) days but less than one (1) ~~[two (2)]~~ year[s], the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for one (1) ~~[two (2)]~~ year[s] or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

SECTION 3. Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), is amended by adding Section 8d to read as follows:

Sec. 8d. (a) The Texas Board of Chiropractic Examiners by rule shall adopt a system by which a licensee may place the license on inactive status. A licensee must apply for inactive status, on a form prescribed by the Board, before the expiration of the license.

(b) A licensee on inactive status is not required to pay license renewal fees.

(c) A licensee on inactive status may not perform any activity regulated under this Act.

(d) If a licensee on inactive status desires to reenter active practice, the licensee must notify the Board in writing. The Board shall remove the licensee from inactive status on payment of an administrative fee and on compliance with any educational or other requirements established by rules adopted by the Board.

SECTION 4. Amend Section 9, Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

Section 9. The Texas Board of Chiropractic Examiners may ~~[shall]~~ upon payment by an applicant of a fee grant license to practice chiropractic to licentiates of other states or territories having requirements and practices equivalent ~~[equal]~~ to those established by the laws of this State, provided said applicant has continuously practiced chiropractic for not less than five years preceding his application to the Board. Applications for license under the provisions of this Section shall be in writing, and upon a form to be prescribed by the Texas Board of Chiropractic Examiners. Said application shall be accompanied by a license, or a certified copy of license to practice chiropractic, lawfully issued to the applicant, upon examination, by some other state or territory of the United States. Said application shall also be accompanied by an affidavit made by the president or secretary of the Board of Chiropractic Examiners which issued the said license, or by a legally constituted chiropractic registration officer of the state or territory by

which the license was granted, and on which the application for chiropractic registration in Texas is based, reciting that the accompanying license has not been cancelled or revoked, and that the statement or qualifications made in the application for chiropractic license in Texas is true and correct. Applicants for license under the provisions of this Section shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license under which the applicant practiced chiropractic in the State or Territory from which the applicant removed, was at the time of such removal in full force, and not suspended or cancelled. Said application shall also state that the applicant is the identical person to whom the said certificate was issued, and that no proceeding has been instituted against the applicant for the cancellation of said certificate to practice chiropractic in the State or Territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which, under the law of Texas is a felony.

SECTION 5. Amend Subsection 10(a), Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

(a) ~~[All applicants for license to practice chiropractic in this state, not otherwise licensed under the provisions of this law, must successfully pass an examination by the Texas Board of Chiropractic Examiners established by this law. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. All]~~ Applicants for licensure by examination shall ~~[be eligible for examination, who]~~ present satisfactory evidence to the Board that they are more than eighteen (18) years of age, of good moral character, have completed sixty (60) semester hours of college courses, other than a chiropractic school, and are either graduates or final semester students of bona fide reputable chiropractic schools (whose entrance requirements and course of instruction are as high as those of the better class of chiropractic schools in the United States); a reputable chiropractic school shall maintain a resident course of instruction equivalent to not less than four (4) terms of eight (8) months each, or a resident course of not less than the number of semester hours required by The University of Texas for the granting of a Bachelor of Arts or Science degree; shall give a course of instruction in the fundamental subjects named in Section 12 of this Act; and shall have the necessary teaching force and facilities for proper instruction in all of said subjects. Every applicant for licensure by examination shall successfully pass all required and optional parts of the examination given by the National Board of Chiropractic Examiners, including the Written Clinical Competency Examination, under such conditions as established by rule of the Board. All applicants for licensure by examination shall successfully pass a practical examination given by the Board and a written examination testing the applicant's knowledge and understanding of the laws and regulations regarding the practice of chiropractic in this state. Applications for examination must be made in writing, verified by affidavit, and filed with the secretary of the Board, on forms prescribed by the Board, accompanied by a fee. All applicants shall be given due notice of the date and place of such examination.

SECTION 6. Amend Subsection 10(b) of Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

(b) ~~[National Boards. The Board shall grant a license without a written examination to an applicant that holds a National Board of Chiropractic Examiners certificate who meets the requirements of this chapter and who has satisfactorily passed a practical examination:]~~ The Board shall periodically determine to its satisfaction whether those applicants who hold National Board of Chiropractic Examiners certificates have been adequately examined. ~~[When the Board determines that those applicants have not been adequately examined, the Board shall require those applicants to be examined in accordance with other provisions]~~

~~of this Act.] If the Board determines that applicants have not been adequately examined, the Board shall require these applicants to be examined by an examination prepared by the Board.~~

SECTION 7. Amend Subsection 10(d) of Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

(d) Prior to the issuance of a license to practice chiropractic, the Board shall require from a person otherwise qualified by law, evidence, verified by transcript of credits, certifying that the person has satisfactorily completed sixty (60) or more semester hours of college credits at a college or university which issues credits acceptable by The University of Texas at Austin leading towards a Bachelor of Arts or a Bachelor of Science degree. The credits shall include the satisfactory completion of courses in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, and public health with an average of seventy-five percent (75%) or better in each of the courses. ~~[The sequence of the courses shall be in the manner as from time to time is required by The University of Texas at Austin.]~~

SECTION 8. Amend Section 10 of Article 4512b, Vernon's Texas Civil Statutes, by adding Subsection 10(g) to read as follows:

(g) The Board may elect to give these examinations during the applicant's last semester of college upon receipt of evidence indicating the applicant has satisfactory grades. Upon applicant's graduation from chiropractic college, he must forward to the Board evidence of satisfactory completion of his course of study.

SECTION 9. Amend Section 12, Article 4512b, Vernon's Texas Civil Statutes, to read as follows:

Section 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five percent (75%) ~~[with not less than sixty percent (60%)]~~ in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof.

SECTION 10. Subsections 10(a) and 10(b), Article 4512b, Vernon's Texas Civil Statutes, as amended by this Act, take effect October 1, 1990. All other provisions of this Act take effect September 1, 1989.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - Colbert

Amend S.B. 237 by adding a new SECTION 10 immediately after SECTION 9 to read as follows and renumber the remaining SECTIONS in consecutive numerical sequence:

SECTION 10. Section 13, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), as amended by

S.B. 169, Acts of the 71st Legislature, Regular Session, is amended to read as follows by adding a new Subsection (e) in Sec. 13. to read as follows:

(e) This Act does not apply to a massage therapist or a massage therapy instructor duly qualified and registered under Article 4512k, Vernon's Texas Civil Statutes, provided:

(1) said massage therapist or massage therapy instructor does not hold himself or herself out to the public as a chiropractor or use the term "chiropractor", "chiropractic", "doctor of chiropractic", "D.C.", or any derivative of those terms in connection with his or her name or practice; and

(2) said massage therapist or massage therapy instructor practices strictly within the scope of their registration so held and in strict conformity with all applicable laws and regulations relating thereto.

The amendments were read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendments to S.B. 237 viva voce vote.

SENATE BILL 1197 WITH HOUSE AMENDMENT

Senator Dickson called S.B. 1197 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - Hinojosa

Amend S.B. 1197 by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 16(b) and (c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by first class mail of any decision or order. When an agency issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorneys of record, and shall keep an appropriate record of that mailing. If a party is not represented by an attorney of record, then the agency shall send a copy of final decision or order ruling on a motion for rehearing by first class mail to that party, and the agency shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of final decision or order as required by this section shall be presumed to have been notified on the date such notice is mailed. [On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.]

(e) Except as provided in Subsection (c) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party within 20 [15] days after the date the party or his attorney of record is notified of the final decision or order as required by Subsection (b) of this Section [of rendition of a final decision or order]. Replies to a motion for rehearing must be filed with the agency within 30 [25] days after the date the party or his attorney of record is notified of the final decision or order as required by Subsection (b) of this Section [of rendition of the final decision or order], and agency action on the motion must be taken within 45 days after the date the party or his attorney of record is notified of the final

~~decision or order as required by Subsection (b) of this Section [of rendition of the final decision or order]. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date the party or his attorney of record is notified of the final decision or order as required by Subsection (b) of this Section [of rendition of a final decision or order]. The agency may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date the party or his attorney of record is notified of the final decision or order as required by Subsection (b) of this Section [of rendition of the final decision or order]. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party or his attorney of record is notified of the final decision or order as required by Subsection (b) of this Section [of rendition of a final decision or order].~~

SECTION 2. This Act applies only to a final decision or order of an agency rendered on or after the effective date of this Act. A final decision or order rendered before the effective date of this Act is governed by the law existing on the date the final decision or order was rendered, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Dickson moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1197 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Dickson, Chairman; Washington, Haley, Caperton and Parker.

CONFERENCE COMMITTEE ON HOUSE BILL 737

Senator Ratliff called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 737 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 737 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chairman; Brooks, Zaffirini, Uribe, and Tejada.

SENATE BILL 1646 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1646** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - T. Smith

Amend **S.B. 1646** as follows:

Strike Section 3 of the bill and renumber the subsequent sections appropriately.

The amendment was read.

SENATE BILL 1647 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1647** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - T. Smith

Amend **S.B. 1647** as follows:

Strike Section 3 of the bill and renumber the subsequent sections appropriately.

The amendment was read.

SENATE BILL 1648 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 1648** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment - T. Smith

Amend **S.B. 1648** as follows:

Strike Section 3 of the bill and renumber the subsequent sections appropriately.

The amendment was read.

Senator Barrientos moved that the Senate do not concur in the House amendments to **S.B. 1646**, **S.B. 1647** and **S.B. 1648**, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bills.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on the bills before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bills: Senators Barrientos, Chairman; Santiesteban, Uribe, Armbrister and Tejeda.

**CONFERENCE COMMITTEE
ON SENATE BILL 417 REVISED**

On motion of Senator Green and by unanimous consent, Senator Parmer will be replaced by Senator Parker on the Conference Committee on **S.B. 417**.

SENATE RESOLUTION 714

Senator Barrientos offered the following resolution:

WHEREAS, David Isaac Cates of Austin has been honored as a national Presidential Scholar, and this esteemed honor is truly worthy of legislative commendation; and

WHEREAS, Isaac is one of 141 graduating high school seniors across the country who will be honored in a series of activities June 17-21, 1989, in Washington, D. C.; and

WHEREAS, Texas has two Presidential Scholars; Isaac Cates was selected from among public schools; and

WHEREAS, This signal honor is the highest scholastic honor the president can bestow; and

WHEREAS, Most of the scholars were selected on the basis of academic achievement, leadership, character, and commitment to high ideals; and

WHEREAS, Twenty were selected for additional accomplishments in the performing or creative arts such as music, dance, theater, writing, or visual art; and

WHEREAS, This multitalented scholar has excelled in English and math as well as science; he has won awards for his performances in theatre and has been recognized for his oratory ability and writing skills; and

WHEREAS, Isaac credits his sophomore English and creative writing teacher at Crockett High School as having the greatest impact on his academic and artistic accomplishments; he taught him both creativity and discipline; and

WHEREAS, Isaac has learned the value of self-discipline and he believes that has made many of his achievements possible; and

WHEREAS, Valedictorian of his graduating class, he has been the recipient of numerous honors and awards including "Cougar Gold" Awards, the Rensselaer Science Award, Bausch and Lomb Science Award, Tracor Scholar Award, and Trustees Award; and

WHEREAS, This worthy recipient of the Presidential Scholarship Award has distinguished himself and brought recognition to his family and his school; and

WHEREAS, The entire State of Texas is extremely proud to have David Isaac Cates represent our state in the nation's capital; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, hereby extend heartfelt congratulations to David Isaac Cates on receiving such a prestigious honor and send him all best wishes for future success; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as a token of this special event and of the highest respect and admiration of the Texas Senate.

The resolution was read.

GUESTS PRESENTED

Senator Barrientos escorted David Isaac Cates and David Kirwin, Principal of Crockett High School, to the President's Rostrum.

The President presented an enrolled copy of S.R. 714, adopted by the Senate on May 23, to David Cates as he received the congratulations of the Senate.

HOUSE BILL 3143 ON SECOND READING

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3143, Relating to the composition and compensation of the members of the Potter County Juvenile Board.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Amend **H.B. 3143** as follows:

(1) Between Sections 1 and 2 of the bill, add a new Section 2 to read as follows and renumber Sections 2, 3, and 4 of the bill as Sections 3, 4, and 5:

SECTION 2. Section 25.1902(h), Government Code, as amended by Section 8.18(e), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(h) A judge of a county court at law shall be paid an annual salary that is not more than ~~[at least equal to]~~ the amount that is \$1,000 less than the total salary paid the district judge in the county. The commissioners court shall pay the salary out of the county's general fund.

(2) Strike Sections 3(b) and (c) of the bill and substitute the following:

(b) If Senate Bill 1104 of the 71st Legislature, Regular Session, 1989, becomes law, Section 3 of this Act takes effect September 1, 1989. If Senate Bill 1104 does not become law, Section 3 of this Act has no effect.

(c) If Section 3 of this Act takes effect, Section 1 of this Act is repealed on September 1, 1989.

The amendment was read and was adopted viva voce vote.

On motion of Senator Bivins and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 3143 ON THIRD READING

Senator Bivins moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3143** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 607 WITH HOUSE AMENDMENTS

Senator Harris called **S.B. 607** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - D. Smith

Amend **S.B. 607** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Article 2, Chapter I, The Texas Banking Code (Article 342-102, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. DEFINITIONS. As used in this code the following terms, unless otherwise clearly indicated by the context, have the meanings specified below:

(1) "Bank"—A state, private, or national bank domiciled in this State.

- (2) "Code"—The Texas Banking Code.
- (3) "Banking Department"—The Banking Department of Texas.
- (4) "Finance Commission" or "Commission"—The Finance Commission of Texas.
~~["Banking Section"—The Banking Section of The Finance Commission of Texas.~~
~~["Building and Loan Section"—The Building and Loan Section of The Finance Commission of Texas.~~
~~["Commissioner"—The Banking Commissioner of Texas.~~
~~["Deputy Commissioner"—The Deputy Banking Commissioner of Texas.]~~
- (5) "Departmental Examiner"—The Departmental Bank Examiner of The Banking Department of Texas.
- (6) "Examiner"—Bank Examiner of The Banking Department of Texas.
- (7) "Assistant Examiner"—Assistant Bank Examiner of The Banking Department of Texas.
- (8) "State Bank"—Any corporation hereafter organized under this Code, and any corporation heretofore organized under the laws of the State of Texas, and which was, prior to the effective date of this Act, subject to the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, as amended, including banks, trust companies, bank and trust companies, savings banks and corporations subject to the provisions of Chapter 9, Title 16 of the Revised Civil Statutes of Texas, 1925, as amended.
- (9) "Director, officer or employee"—Director, officer or employee of a state bank or an individual acting in a comparable capacity for a private bank.
- (10) "Board"—Board of directors of a state bank or a person or group of persons acting in a comparable capacity for a private bank.
- (11) "National Bank"—Any banking corporation organized under the provisions of Title 12, United States Code, Section 21 (U.S. Rev. Statutes, Section 5133) and the amendments thereto.
- (12) "State Savings ~~[Building]~~ and Loan Association" or "State Association"—Any ~~[building and loan or]~~ savings and loan association or savings bank heretofore or hereafter organized under the laws of this State.
- (13) "Federal Savings and Loan Association"—Any savings and loan association or savings bank heretofore or hereafter organized under the laws of the United States of America.
- (14) "District Court"—A district court of the county in which the bank involved is domiciled.
- (15) "City"—City, village, town, or similar community.
- (16) "Capital"—The common capital stock.
- (17) "Chapters and Articles"—The Chapters and articles of this Code.
- (18) "Bank Holding Company"—A company defined as a bank holding company by Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841).
- (19) "Bank Holding Company Act of 1956"—The federal Bank Holding Company Act of 1956, as amended, P.L. 84-511 (12 U.S.C. Sec. 1841 et seq.).
- (20) "Bank Services"—Activities, such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and marking of checks, statements, notices and similar items or other clerical, bookkeeping, accounting, statistical or similar functions performed by a bank, that may be categorized as data processing and any services associated with the electronic transfer of funds.

(21) "Processor"—A state or national bank, banking affiliate, corporation, or other business that performs bank services.

(22) "Texas Bank Holding Company"—A bank holding company that:

(A) [(+)] has its principal executive office in this State;

(B) [(2)] is not owned or controlled, directly or indirectly, by a bank holding company that has its principal executive office outside this State;

(C) [(3)] owns or controls, directly or indirectly:

(i) [(A)] state banks or national banks domiciled in this State holding not less than 50 percent of the total deposits, as defined by Section 2[3], Federal Deposit Insurance Act (12 U.S.C. Section 1813), held by all banks that it owns or controls, directly or indirectly; or

(ii) [(B)] a state bank or national bank domiciled in this State and owned or controlled, directly or indirectly, such a bank on July 15, 1986; and

(D) [(4)] either:

(i) [(A)] owns or controls, directly or indirectly, a state bank or national bank domiciled in this State and owned or controlled, directly or indirectly, such a bank on July 15, 1986; or

(ii) [(B)] acquires after July 15, 1986, ownership or control, direct or indirect, of any state bank or national bank in this State and at the time it becomes a bank holding company the only bank or banks owned or controlled by it, directly or indirectly, are located in this State.

(23) "Out-of-State Bank Holding Company"—A bank holding company that is not a Texas bank holding company. For purposes of this code a bank holding company is considered an out-of-state bank holding company at all times after it becomes an out-of-state bank holding company.

(24) "Control"—The ability or power to vote, directly or indirectly, 25 percent or more of any class of voting securities or the ability to control in any manner the election of a majority of the board of directors.

(25) "Capital Adequacy Guidelines"—Regulations, rules, orders, or other guidelines relating to capitalization requirements of a state bank, national bank, or bank holding company adopted by the Bureau of the Comptroller of the Currency of the United States in the case of a national bank, the Board of Governors of the Federal Reserve System in the case of a bank holding company, the commissioner in the case of a state bank, or the successor to any of those authorities having the authority to regulate capitalization requirements of a state bank, national bank, or bank holding company, as the case may be.

SECTION 2. Article 3, Chapter I, The Texas Banking Code (Article 342-103, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. FINANCE COMMISSION—~~[BANKING SECTION AND SAVINGS AND LOAN SECTION CONSUMER CREDIT SECTION CREATION]~~ GENERAL POWERS. A. There is hereby established and created The Finance Commission of Texas which shall consist of nine (9) ~~[twelve (12)]~~ members; ~~and be divided into three (3) sections, namely: The Banking Section, consisting of six (6) members, The Savings and Loan Section, consisting of three (3) members, and the Consumer Credit Section, consisting of three (3) members].~~ The Finance Commission ~~[and each section thereof]~~ shall:

(1) adopt rules and determine general policies for the regulation of state banks, state associations, and the consumer credit industry in the state;

(2) consult and advise the Banking Commissioner, Savings and Loan Commissioner, and Consumer Credit Commissioner on the implementation and enforcement of the rules and policies adopted by the Finance Commission; and

(3) carry out [serve as an advisory board to the Commissioner as to general policies and shall have such] other duties, powers, and authority as may be conferred [upon them] by law.

B. The Finance Commission [~~Banking Section, the Savings and Loan Section, and the Consumer Credit Section~~] shall make a thorough and intensive study of the Texas banking, savings and loan, and consumer credit statutes, respectively, with a view to so strengthening said statutes as to attain and maintain the maximum degree of protection to depositors, stockholders, shareholders, and consumers, and shall report every two (2) years to the Legislature by filing with the Clerks of the Senate and the House of Representatives the results of its study, together with its recommendations.

SECTION 3. Article 4, Chapter I, The Texas Banking Code (Article 342-104, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. FINANCE COMMISSION—~~[SECTIONS—]~~QUALIFICATIONS OF MEMBERS. 1. Two (2) [~~Four (4)~~] members of the Finance Commission [~~Banking Section~~] shall be banking executives. For the purposes of this article, a banking executive is a person who has had active bankers who shall have had not less than five (5) years or more executive experience in the seven (7) years next preceding the person's [~~their~~] appointment in a Federal or State bank in a capacity not lower than cashier[~~]. The Banking Section shall at all times include four (4) members~~], and who [each of whom], at the time of the person's [his] appointment, is an officer in a State bank [~~which falls within one of the four (4) quartiles of the total number of State banks, according to and measured by the capital, certified surplus, and undivided profits of such banks as of the last statement of condition published pursuant to the Commissioner's call in the year previous to the year in which the appointments are made. Each quartile shall at all times be represented by one (1) member on the Banking Section who, at the time of his appointment, is an officer in a State bank within such quartile, and each member shall continue to serve from his respective quartile throughout his term of office notwithstanding any adjustment of his bank's capital, certified surplus, and undivided profits subsequent to the date of the appointment. The Commissioner shall divide the total number of State banks with as near an equal number of banks as mathematically possible being placed in each quartile and advise the Governor which State banks fall within each of the four (4) quartiles prior to any appointments of banker members of the Commission. Two (2) members of the Banking Section shall be selected by the Governor upon the basis of recognized business ability~~].

2. Two (2) members of the Finance Commission [~~Savings and Loan Section~~] shall be savings and loan executives. For the purposes of this section a savings and loan executive is a person who has had who shall have had not less than five (5) years or more executive [~~full-time employment~~] experience in the seven (7) years next preceding the person's appointment in a State [~~Savings and Loan~~] or Federal Savings and Loan Association in a capacity not lower than cashier, and who at the time of the person's appointment is an officer[~~]. The Savings and Loan Section shall at all times consist of one (1) member who is a full-time employed executive~~] in a State association [~~which, at the time of his appointment, had gross assets not exceeding One Hundred Million Dollars (\$100,000,000) and one (1) member who is a full-time employed executive in a State association which, at the time of his appointment, had gross assets exceeding One Hundred Million Dollars (\$100,000,000). One (1) member of the Savings and Loan Section shall be selected by the Governor upon the basis of recognized business ability~~].

3. Experience as Banking Commissioner, Deputy Banking Commissioner, Departmental Examiner, or Examiner shall be deemed executive banking experience, and experience as Savings and Loan Commissioner, Deputy Savings and Loan Commissioner, [Supervisor] or Savings and Loan Examiner shall be deemed executive savings and loan experience, within the meaning of this article.

4. The members of the Finance Commission who are not banking executives or savings and loan executives shall be selected by the Governor on the basis of recognized business ability. Those members may not be banking executives, savings and loan executives, or controlling shareholders in a bank or savings and loan association. At least one of those members must be a certified public accountant. ~~[Two (2) positions of the Consumer Credit Section must be filled by individuals, each of whom is licensed under Chapter 3, Title 79, Revised Statutes (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), is an executive or a person, other than a bank or savings and loan association, licensed under that chapter or is licensed to engage in business as a pawnbroker under Chapter 51, Title 79, Revised Statutes (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes). One (1) member of that section must be a member of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:~~

~~[(a) is licensed by an occupational regulatory agency in the field of lending, pawnbroking, or making installment sales;~~

~~[(b) is employed by or participates in the management of a business entity or other organization related to the field of lending, pawnbroking, or making installment sales; or~~

~~[(c) has, other than as a consumer, a financial interest in a business entity related to the field of lending, pawnbroking, or making installment sales.]~~

5. A member or employee of the Finance Commission may not be an officer, employee, or paid consultant of a trade association in the banking or lending industry. A member or employee of the Finance Commission may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the banking or lending industry.

SECTION 4. Article 5, Chapter I, The Texas Banking Code (Article 342-105, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5. FINANCE COMMISSION—RESIDENCE OF MEMBERS. Not more than ~~[No]~~ two (2) members of the ~~[same section of the]~~ Finance Commission shall be residents of the same State Senatorial District.

SECTION 5. Section 1, Article 6, Chapter I, The Texas Banking Code (Article 342-106, Vernon's Texas Civil Statutes), is amended to read as follows:

1. The Governor of the State of Texas, subject to confirmation by the Senate, shall appoint the members of the Finance Commission, each of whom ~~except the initial appointees;~~ shall serve for a term of six (6) years, and the term of one third of the members ~~[of each section]~~ shall expire February 1 of each even-numbered ~~[odd-numbered]~~ year.

SECTION 6. Article 9, Chapter I, The Texas Banking Code (Article 342-109, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 9. FINANCE COMMISSION—EXPENSES AND COMPENSATION OF MEMBERS. Each member of the Finance Commission shall be reimbursed reasonable and necessary expenses incidental to travel incurred by him in connection with the performance of his official duties. Each member of the Finance Commission is entitled to per diem as set by legislative appropriation for each day that the member engages in the business of the Finance Commission ~~[or the section the member represents]~~.

SECTION 7. Article 10, Chapter I, The Texas Banking Code (Article 342-110, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. FINANCE COMMISSION—DISQUALIFICATION OF MEMBERS. No member shall act at any meeting of the Finance Commission ~~[or either section thereof;]~~ when the matter under consideration specifically relates to any corporation in which such member is an officer, director, or stockholder.

SECTION 8. Article 11, Chapter I, The Texas Banking Code (Article 342-111, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11. FINANCE COMMISSION — ~~[SECTIONS=]~~MEETINGS — QUORUM[— MINUTES]. The Finance Commission ~~[and each Section thereof]~~ shall hold at least six ~~[two]~~ regular public meetings during each calendar year at such dates as are set by the Finance Commission. ~~[At the first regular public meeting of the Finance Commission during each calendar year, the Commission shall elect a chairman from its members by majority vote. The chairman of the Finance Commission shall be entitled to vote on all matters. The term of office of the chairman of the Finance Commission shall begin on July 1 of each calendar year and shall expire on June 30 of the succeeding calendar year. No member of the Finance Commission shall serve consecutive terms as chairman of the Finance Commission. The chairman of the Finance Commission shall preside at all public meetings of the Finance Commission and shall cause adequate minutes of the proceedings of all public meetings to be kept.]~~ Special public meetings of the Finance Commission may be called by the chairman or by any three members of the Finance Commission. ~~[The Commission and each Section thereof may adopt internal requirements of procedure governing the time and place of meetings, the character of notice of special public meetings, the procedure by which all public meetings are to be conducted and other similar matters.]~~ A majority of the members of the Finance Commission shall constitute a quorum for the purpose of transacting any business coming before the Finance Commission ~~[and a majority of each Section of the Commission shall constitute a quorum for the purpose of transacting any business coming before said Section].~~

SECTION 9. Chapter I, The Texas Banking Code (Article 342-101 et seq., Vernon's Texas Civil Statutes), is amended by adding Articles 11B and 11C to read as follows:

Art. 11B. CHAIRMAN. The Governor shall appoint a member of the Finance Commission as chairman of the Finance Commission. The chairman serves at the will of the Governor. Subject to Article 10 of this chapter, the chairman is entitled to vote on all matters. The chairman shall preside at all public meetings of the Finance Commission and provide for the keeping of minutes of the proceedings of those meetings. The chairman may:

(1) adopt rules and procedures of the Finance Commission as the chairman considers necessary for the orderly operation of the Finance Commission and for communication among the Finance Commission, the Banking Department, the Savings and Loan Department, and the Office of Consumer Credit Commissioner;

(2) adopt internal requirements of procedure governing the time and place of meetings, the character of notice of special public meetings, the procedure by which public meetings are to be conducted, and other similar matters; and

(3) appoint committees composed of Finance Commission members as the chairman considers necessary to carry out the Finance Commission's business, including committees to perform studies that the Finance Commission is required by law to carry out.

Art. 11C. FINANCE COMMISSION STAFF; EXPENSES. The Finance Commission may employ an executive director and staff as it considers necessary to carry out its functions. The expenses of operation of the Finance Commission shall be paid from funds appropriated to the Banking Department, Savings and Loan Department, and Office of Consumer Credit Commissioner, in proportion to the amount each of those agencies receives from its operations.

SECTION 10. Article 12, Chapter I, The Texas Banking Code (Article 342-112, Vernon's Texas Civil Statutes), as amended by Chapters 244 and 499, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

Art. 12. REPORTS BY BANKING COMMISSIONER—EXAMINATIONS AND AUDITS—FEES, PENALTIES AND REVENUES—EXPENSES—BUDGETS—REPORTS TO GOVERNOR AND LEGISLATURE. 1. The State Auditor shall audit the financial transactions of the Banking Department during each fiscal year. The actual costs of such audits shall be paid to the State Auditor from funds appropriated to the Banking Department.

2. The Banking Commissioner and the ~~[Banking Section of the]~~ Finance Commission shall establish reasonable and necessary fees for the administration of this code.

3. All sums of money paid to the Banking Department shall be deposited in the State Treasury to the credit of a special fund known as the Banking Department Expense Fund and may be used only for the administration of the statutory duties of the Banking Department and Finance Commission. All expenses incurred by the Banking Department shall be paid only from that fund, and no such expense shall ever be a charge against the other funds of this State.

SECTION 11. Article 13, Chapter I, The Texas Banking Code (Article 342-113, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 13. BANKING ~~[SECTION=]~~ RULES AND REGULATIONS—LOANS AND INVESTMENTS—INSURANCE—PRESERVATION OF BOOKS AND RECORDS—AFFAIRS TRANSACTED BY NATIONAL BANKS—DETERMINATION OF INCIDENTAL POWERS. (a) The Finance Commission ~~[Banking Section]~~, through resolution ~~[adopted by not less than four affirmative votes]~~, may promulgate general rules and regulations not inconsistent with the Constitution and Statutes of this State, and from time to time amend the same, which rules and regulations shall be applicable alike to all state banks and, where indicated, to all private banks to effect the following ends and purposes:

1. To prevent state banks, as determined by the Finance Commission to be required to protect investors in state banks, from concentrating an excessive or unreasonable portion of their resources in any particular type or character of loan, security, or investment and to otherwise establish standards for investments by state banks [or in any single line of credit under any exception to Article 7, of Chapter V of this Code, thereby preventing the solvency or liquidity of such banks depending to an undue extent upon such type or character of investment or single line of credit].

2. To provide adequate fidelity coverage or insurance on the officers and employees of state banks, and fire, burglary, robbery and other casualty coverage for state banks, so as to prevent loss through theft, defalcation or other casualty, and to make certain that the insurer or surety is solvent and will be able to pay losses sustained.

3. To provide for the preservation of the books and records of the Banking Department and of state and private banks during such time as said books and records are of value, and to permit the destruction or other disposition of such books and records after the same are no longer of any value.

4. To permit state banks to transact their affairs in any manner or make any loan or investment which they could do under existing or any future law, rule or regulation were they organized and operating as a National bank under the laws of the United States; but ~~[it is expressly provided that]~~ this authority does not ~~[is subject to the laws of this State and shall not be construed in any wise to confer authority to]~~ abridge State [such] laws or diminish or limit any rights or powers specifically given to state banks by such laws; and it is further provided that, any provision of this Code to the contrary notwithstanding, the transaction of affairs and

making of loans or investments permitted by valid rules and regulations shall not constitute a violation of any penal provision of the statutes of this state.

5. From time to time upon request of the Banking Commissioner, to define, identify and determine incidental powers which a state or private bank may exercise as necessary to its specific powers under Article 1, Chapter III of this Code.

(b) The Finance Commission may:

1. Advise with the Banking Commissioner as to the forms to be prescribed for financial statements by State banks.

2. Confer with the Banking Commissioner and with the President of the regional Federal Reserve Bank of the district in which State banks are members on general and special business and economic conditions affecting State banks.

3. Request information and make recommendations with respect to matters within the jurisdiction of the Banking Commissioner relating to the banking business, including recommendations as to legislation affecting banks.

SECTION 12. Article 14, Chapter I, The Texas Banking Code (Article 342-114, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. SAVINGS AND LOAN ~~[SECTION=]~~RULES AND REGULATIONS—LOANS AND INVESTMENTS—ADVISORY POWERS. The Finance Commission ~~[Savings and Loan Section]~~, through resolutions ~~[adopted by not less than two affirmative votes]~~, may promulgate general rules and regulations not inconsistent with the Constitution and Statutes of this State, and from time to time amend the same, which rules and regulations shall be applicable alike to all State associations, and may authorize State ~~[savings and loan]~~ associations ~~[organized under the laws of this State]~~ to invest their funds in any manner and to the same extent which said association could invest such funds under existing or any future law, rule or regulation were they organized and operating as a Federal Savings and Loan Association under the laws of the United States, provided, however, that this authority shall not be construed in any wise to confer authority to abridge, or diminish or limit any rights or powers specifically given to State associations by the statutory laws of this State. In addition to such powers as may be conferred upon the Finance Commission ~~[Savings and Loan Section]~~ by this Act or by the Savings and Loan Act of Texas, as amended, the Finance Commission ~~[Savings and Loan Section]~~ shall have the following duties:

(a) When in the judgment of the Finance Commission ~~[Section]~~, protection of investors in State associations requires additional regulations or limitations, to promulgate such additional rules and regulations as will in its judgment prevent State ~~[savings and loan]~~ associations from concentrating an excessive or unreasonable portion of their resources in any particular type or character of loan or security authorized by the Texas Savings and Loan Act.

(b) When in the judgment of the Finance Commission ~~[Section]~~, establishment of standards or changes in existing standards for investment are necessary, to establish standards through rules and regulations for investments by State associations, which standards may also establish a limit in the amount which State associations may invest in any particular type or character of investment to an amount or percentage based upon assets or net worth.

(c) To advise with the Savings and Loan Commissioner as to the forms to be prescribed for the filing of the annual statements with the Savings and Loan Department and the forms to be prescribed for the publication of the annual financial statements by State associations.

(d) To confer with the Savings and Loan Commissioner and with the President of the regional Federal Home Loan Bank of the district in which ~~[Texas]~~ State associations are members on general and special business and economic conditions affecting State associations.

(e) To request information and to make recommendations with respect to matters within the jurisdiction of the Savings and Loan Commissioner as relating to the savings and loan business, including recommendations as to legislation affecting such institutions, providing, that no information regarding the financial condition of any State savings and loan association obtained through examination or otherwise shall be divulged to any member of the Finance Commission, nor shall any member of the Finance Commission be given access to the files and records of the Department appertaining thereto; provided, further, however, that the Commissioner may disclose to the Finance Commission [Savings and Loan Section] any file or record pertinent to any hearing or matter pending before the Finance Commission [such Section].

SECTION 13. Article 14A, Chapter I, The Texas Banking Code (Article 342-114A, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14A. CONSUMER CREDIT [SECTION]. The Finance Commission [Consumer Credit Section], through resolutions [adopted by not less than two affirmative votes], may promulgate rules necessary for supervising the Consumer Credit Commissioner and for ensuring compliance with Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes).

SECTION 14. Section 6(d), Article 15, Chapter I, The Texas Banking Code (Article 342-115, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) When either the State Treasurer or Banking Commissioner is unable to personally attend an official meeting of the Board, the respective first deputy of such member may appear and vote in his stead, provided that the Board rules shall prescribe the deputy by name and title who is so authorized, and provided further, that two such deputies may not both sit as substitute members of the Board at the same meeting.

SECTION 15. Article 1, Chapter II, The Texas Banking Code (Article 342-201, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. BANKING

COMMISSIONER—ELECTION—QUALIFICATION—COMPENSATION. By and with the advice and consent of the Senate, the Finance Commission, by at least five (5) affirmative votes, shall elect a Banking Commissioner who shall serve at the pleasure of the Finance Commission, provided that the Banking Commissioner first elected shall take office at the expiration of the term of office of the present Banking Commissioner. Said Banking Commissioner shall be an employee of the Finance Commission and subject to its orders and directions. The Banking Commissioner shall have not less than seven (7) [ten (10)] years experience in banking or bank supervision. The Banking Commissioner shall receive such compensation as is fixed by the Finance Commission [but never to exceed the compensation now paid to the Governor of the State]. The salary of the Banking Commissioner may not exceed the amount that is \$2,000 less than the salary of the Governor. The salary of an employee of the Banking Department in any other exempt position may not exceed the amount that is \$2,000 less than the salary of the Commissioner. The Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes) applies to a position of the Banking Department only if it is classified in groups 1-10 under the position classification plan in effect on January 1, 1989, or comparable positions under any successor plan. The legislature in the General Appropriations Act may determine the total amount appropriated to the Banking Department but may not determine the number or salaries of employees of the Banking Department in exempt positions. The Finance Commission, subject to the limits provided by this article, shall determine the number of employees of the Banking Department in exempt positions and the salaries of those employees. The Banking Department may use funds appropriated to it for any purpose to pay the salaries determined by the Finance Commission.

SECTION 16. Article 2, Chapter II, The Texas Banking Code (Article 342-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. ~~DEPUTY BANKING COMMISSIONER—APPOINTMENT—~~
~~QUALIFICATIONS—DUTIES—COMPENSATION.~~ The Banking Commissioner shall appoint a Deputy Banking Commissioner who shall have the same qualifications as are required of the Banking Commissioner and shall, during the absence or inability of the Banking Commissioner, be vested with all of the powers and perform all of the duties of the Banking Commissioner. The Deputy Banking Commissioner shall receive such compensation as is fixed by the Finance Commission.

SECTION 17. Article 3, Chapter II, The Texas Banking Code (Article 342-203, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. ~~DEPARTMENTAL~~
~~EXAMINER—APPOINTMENT—QUALIFICATIONS—~~ COMPENSATION. The Banking Commissioner shall appoint a Departmental Bank Examiner who shall be a bank accountant with not less than five (5) years experience as such or as an examiner in the Banking Department of Texas, the National Banking System, the Federal Deposit Insurance Corporation or the Federal Reserve System. The Departmental Bank Examiner shall receive such compensation as is fixed by the Finance Commission.

SECTION 18. Article 4, Chapter II, The Texas Banking Code (Article 342-204, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. ~~EXAMINERS—ASSISTANT EXAMINERS—APPOINTMENT—~~
~~QUALIFICATIONS—COMPENSATION.~~ The Banking Commissioner shall appoint bank examiners and assistant bank examiners in sufficient number to fully perform his duties and responsibilities under the Code and the laws of this State. Such examiners shall have the qualifications required by the ~~[Banking Section of the]~~ Finance Commission. Each examiner and each assistant examiner shall receive such compensation as shall be fixed by the Finance Commission.

SECTION 19. Sections (a), (b), (d), (e), (g), (h), and (i), Article 5, Chapter II, The Texas Banking Code (Article 342-205, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) By and with the advice and consent of the Senate, the Finance Commission of Texas, by at least five (5) affirmative votes ~~[two (2) of which must be by members of the Savings and Loan Section]~~, shall elect a Savings and Loan Commissioner who shall serve at the pleasure of the Finance Commission and who shall be an employee of said Commission and subject to its orders and direction. The Savings and Loan Commissioner shall have had not less than seven (7) ~~[five (5)]~~ years ~~[practical]~~ experience ~~[within the ten (10) years prior to his election]~~ in the executive management of a savings and loan association or in savings and loan supervision ~~[doing business in this State, provided that experience as Savings and Loan Supervisor, Deputy Savings and Loan Supervisor, Savings and Loan Examiner, or Savings and Loan Hearing Officer shall be deemed savings and loan experience within the meaning of this Section]~~. The Savings and Loan Commissioner shall receive such compensation as is fixed by the Finance Commission. ~~The [but not in excess of that paid the Governor and such] compensation shall be paid from funds of the Savings and Loan Department.~~

(b) The Savings and Loan Commissioner, subject to the approval of the ~~[Savings and Loan Section of the]~~ Finance Commission, shall appoint one or more Deputy Savings and Loan Commissioners, one of which shall have the same qualifications required of the Savings and Loan Commissioner and shall be designated by the Savings and Loan Commissioner to be vested with all of the powers and perform all of the duties of the Savings and Loan Commissioner during the absence or inability of the Savings and Loan Commissioner. ~~[A Deputy Savings~~

and Loan Commissioner shall have had practical experience in a savings and loan association doing business in this State or experience in the Savings and Loan Department in this State.] The Savings and Loan Commissioner may also appoint a Hearing Officer or Officers to conduct such investigations or public hearings as may be required by law of the Savings and Loan Commissioner. The Hearing Officer or Officers shall be vested for the purpose of such investigations or public hearings with the power and authority as the Savings and Loan Commissioner would have if he were personally conducting such investigation or public hearing, provided that the Hearing Officer or Officers shall not be authorized to make any order upon the final subject matter of such investigation or hearing; and provided, further, that the record of any investigation or public hearing conducted before the Hearing Officer may be considered by the Savings and Loan Commissioner in the same manner and to the same extent as evidence that is adduced before him personally in any such proceeding. The Savings and Loan Commissioner shall also appoint Savings and Loan Examiners. Each Deputy Savings and Loan Commissioner, the Savings and Loan Examiners, each Hearing Officer, and all other officers and employees of the Savings and Loan Department shall receive such compensation as is fixed by the Finance Commission which shall be paid from the funds of the Savings and Loan Department.

(d) Upon the appointment and qualification of a Savings and Loan Commissioner under this Act such Savings and Loan Commissioner shall in person or by and through the Deputy Savings and Loan Commissioner, Savings and Loan Examiners, or other officers of the Savings and Loan Department, supervise and regulate, in accordance with the rules and regulations promulgated by the Savings and Loan Commissioner together with the ~~[Savings and Loan Section of the]~~ Finance Commission, all savings and loan associations doing business in this State (except Federal Savings and Loan Associations organized and existing under Federal Law) ~~and he shall have and perform all of the duties and shall exercise all of the powers theretofore imposed upon the Banking Commissioner and upon the Building and Loan Supervisor under and by virtue of the laws of this State with reference to savings and loan associations, and the Banking Commissioner shall be relieved of all responsibility and authority relating to the granting of charters and the regulation and supervision of such associations].~~

(e) The rule-making power of the Savings and Loan Commissioner and the ~~[Savings and Loan Section of the]~~ Finance Commission relating to savings and loan associations shall not be exercised unless notice of the terms or substance of the proposed rule or regulation or amendment to existing rules or regulations has been given to all associations subject to regulation hereunder by mail, and, if within twenty (20) days after issuance of such notice, as many as three (3) ~~[five (5)]~~ associations request a hearing on such proposal, a public hearing shall be called by the Savings and Loan Commissioner at which any interested party may present evidence or argument relating to such proposal. After consideration of any relevant matter available from the files and records of the Savings and Loan Department or presented at any such hearing, any rule, regulation or amendment approved and adopted pursuant to such hearing shall be promulgated in written form and the effective date thereof fixed by the order of adoption and promulgation.

(g) The Savings and Loan Commissioner shall attend each meeting of the ~~[Savings and Loan Section of the]~~ Finance Commission at which matters relating to savings and loan associations will be considered, but he shall not vote. ~~[The Savings and Loan Section shall elect a Chairman in the same fashion and for the same term as required and provided for the Chairman of the Commission. Special meetings of the Section may be called by the Chairman, or any two (2) members of the Section.]~~

(h) The Savings and Loan Commissioner and the ~~[Savings and Loan Section of the]~~ Finance Commission shall establish reasonable and necessary fees for the administration of the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) and support of the Finance Commission as provided by Article 11C, Chapter I, of this Code. The Savings and Loan Commissioner shall collect all fees, penalties, charges and revenues required to be paid by savings and loan associations and shall from time to time as directed by the Finance Commission submit to such Commission a full and complete report of the receipts and expenditures of the Savings and Loan Department, and the Finance Commission may from time to time examine the financial records of the Savings and Loan Department or cause them to be examined. In addition, the State Auditor shall audit the financial transactions of the Savings and Loan Department each fiscal year, and the actual costs of such audits shall be paid to the State Auditor from the funds of the Savings and Loan Department. Notwithstanding anything to the contrary contained in any other law of this State, beginning September 1, 1985, all sums of money paid to the Savings and Loan Department from all sources shall be deposited in the State Treasury to the credit of a special fund to be known as the Savings and Loan Department Expense Fund and may be used only for the expenses incurred by the Savings and Loan Department and Finance Commission. All expenses incurred by the Savings and Loan Department shall be paid only from such fund. The Finance Commission shall promulgate and adopt such rules and regulations as may be necessary to coordinate the operation of the Savings and Loan Department with the operation of the Banking Department and the Office of Consumer Credit Commissioner.

(i) Insofar as the provisions of this Section may conflict with any other provisions of The Texas Banking Code of 1943, as amended, or Senate Bill No. 111, Acts 1929, 41st Legislature, page 100, Chapter 61, as amended, or the Texas Savings and Loan Act of 1963, Chapter 113, Acts 58th Legislature, 1963, page 269, et seq., as amended, the provisions of this Act shall control; except that the terms "Savings and Loan," and "Savings and Loan Association," ~~[and "Savings and Loan Section of the Finance Commission"]~~ as used herein, are intended to and shall have the same meaning as the terms "Building and Loan" and "Building and Loan Association" ~~[and "Building and Loan Section of the Finance Commission"]~~ as used in said Statutes; ~~and the Building and Loan Section of the Finance Commission is hereby renamed as the Savings and Loan Section of the Finance Commission of Texas].~~

SECTION 20. Article 5, Chapter II, The Texas Banking Code (Article 342-205, Vernon's Texas Civil Statutes), is amended by adding Section (r) to read as follows:

(r) The salary of the Savings and Loan Commissioner may not exceed the amount that is \$2,000 less than the salary of the Governor. The salary of an employee of the Savings and Loan Department in any other exempt position may not exceed the amount that is \$2,000 less than the salary of the Commissioner. The Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes) applies to a position of the Savings and Loan Department only if it is classified in groups 1-10 under the position classification plan in effect on January 1, 1989, or comparable positions under any successor plan. The legislature in the General Appropriations Act may determine the total amount appropriated to the Savings and Loan Department but may not determine the number or salaries of employees of the Savings and Loan Department in exempt positions. The Finance Commission, subject to the limits provided by this article, shall determine the number of employees of the Savings and Loan Department in exempt positions and the salaries of those employees. The Savings and Loan Department may use funds appropriated to it for any purpose to pay the salaries determined by the Finance Commission.

SECTION 21. Article 6, Chapter II, The Texas Banking Code (Article 342-206, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6. OATH AND BOND OF BANKING COMMISSIONER AND OTHERS—PREMIUMS. The Banking Commissioner, the Deputy Banking Commissioner, the Departmental Examiner, the Liquidating Supervisor, and each examiner, assistant examiner, and special agent, the Savings and Loan Commissioner and each savings and loan examiner and each other officer and employee specified by the appropriate Commissioner shall, before entering upon the duties of his office, take an oath of office and make a fidelity bond in the sum of One Hundred Thousand Dollars (\$100,000), payable to the Governor of the State of Texas, and his successors in office, in individual, schedule or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the United States Government. Any bond provided under this article shall be on a form approved by the Finance Commission. The premiums for such bonds shall be paid out of the funds appropriated for the operation of the Banking Department or the Savings and Loan Department, as applicable.

SECTION 22. Article 7, Chapter II, The Texas Banking Code (Article 342-207, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7. BANKING COMMISSIONER—GENERAL POWERS—DUTIES—LIABILITIES OF BANKING COMMISSIONER AND OTHERS—DEFENSE BY ATTORNEY GENERAL. The Banking Commissioner shall supervise and shall regulate, as provided in this Code, all state and private banks and shall enforce the provisions of this Code in person or through the Deputy Banking Commissioner, the Departmental Examiner or any examiner. The Banking Commissioner, each member of the Finance Commission, each member of the State Banking Board, the Deputy Banking Commissioner, the Departmental Examiner, the Liquidating Supervisor, each examiner, assistant examiner, and special agent, ~~[the Building and Loan Supervisor, each building and loan examiner,]~~ and each other officer and employee of the State Banking Department shall not be personally liable for damages occasioned by his official acts or omissions except when such acts or omissions are corrupt or malicious. The Attorney General shall defend any action brought against any of the above mentioned officers or employees by reason of his official act or omission, whether or not at the time of the institution of the action the defendant has terminated his service with the Department.

SECTION 23. Article 8, Chapter II, The Texas Banking Code (Article 342-208, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8. EXAMINATION — MAY ADMINISTER OATHS — FEES — DISPOSITION. The Banking Commissioner shall examine each state and private bank annually and no more, unless the Banking Commissioner deems additional examinations necessary to safeguard the interest of depositors, creditors, and stockholders, and to enforce the provisions of this Code, except that the Banking Commissioner may defer an examination for no more than six months if the Banking Commissioner considers the deferment necessary for the efficient enforcement of this Code. The Banking Commissioner may accept examinations of state banks by a federal agency in lieu of an examination required by this Article. The performance of bank services by a processor shall be subject to regulation and examination by the Banking Commissioner to the same extent as if the services were being performed by the bank itself on its own premises. The Banking Commissioner, Deputy Banking Commissioner, Departmental Examiner and each examiner may administer oaths and examine any person under oath upon any subject which he deems pertinent to the financial condition of any state or private bank. The Banking Commissioner and the ~~[Banking Section of the]~~ Finance Commission shall assess and collect a fee in connection with each examination, based on the bank's total assets, covering the cost of such examination, the equitable

or proportionate cost of maintenance and operation of the Banking Department, and the enforcement of the provisions of the Banking Code, including but not limited to, the premium on the bond of the Banking Commissioner and other officers and employees of the Banking Department, and such other fidelity or casualty insurance or coverage required or furnished pursuant to or in connection with the provisions of the Banking Code, together with all other expenses of the Banking Department, which fee shall in no event be less than Fifty Dollars (\$50) for each examination so made. The Banking Commissioner may assess and collect a fee annually, in addition to the fee collected in connection with each examination, based on the bank's total assets, to cover the equitable or proportionate cost of maintenance and operation of the Banking Department and the enforcement of the provisions of the Banking Code. All sums of money paid to the Banking Department under this Code shall be deposited in the State Treasury to the credit of ~~[a special fund to be known as]~~ the Banking Department Expense Fund ~~[and may be used only for the administration of this Code]~~.

SECTION 24. Article 8a, Chapter II, The Texas Banking Code (Article 342-208a, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8a. EXAMINATION OF NONBANKING AFFILIATES. The Banking Commissioner may examine the affiliates of a state or private bank to the extent it is necessary to safeguard the interest of depositors, creditors, and stockholders of the bank and to enforce the provisions of The Texas Banking Code. The Banking Commissioner may conduct the examination in conjunction with any examination of the state or private bank or affiliate conducted by any other state or federal regulatory authority. For the purpose of this Article, "affiliate" means any bank holding company of which the state or private bank is a subsidiary and any nonbanking subsidiary of that bank holding company, as "subsidiary" is defined by Section 2 of the federal Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841(d), as amended).

SECTION 25. Article 9, Chapter II, The Texas Banking Code (Article 342-209, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 9. CALL STATEMENTS—FILING—PUBLICATION—POSTING—PENALTY. The Banking Commissioner shall call upon each state bank four times each year to make and publish a statement of its financial condition as of the close of business on a date specified in such call. Such statements shall be upon such form and reflect such information as may be prescribed by the Banking Commissioner. Such statement shall be published within the time specified in the call in some newspaper of general circulation published in the county of the bank's domicile, or if no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county, and a publisher's certificate reflecting such publication shall be filed with the Banking Commissioner within the time specified in the call. A copy of the latest called statement shall be kept posted in the lobby of the banking house at a point accessible to the public. Any state bank which fails to publish such statement or to file such publisher's certificate, within the periods herein prescribed in the call, or to post such notice, shall be subject to a penalty not exceeding Five Hundred Dollars (\$500.00) to be collected by suit by the Attorney General on behalf of the Banking Commissioner.

SECTION 26. Article 10, Chapter II, The Texas Banking Code (Article 342-210, Vernon's Texas Civil Statutes), as amended by Chapters 321 and 973, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Art. 10. INFORMATION CONFIDENTIAL — PRIVILEGED — EXCEPTIONS. Subject to the provisions of Section 5 of Chapter 183 of the Forty-fourth Legislature of Texas (1935), page 461 (Article 489b, Section 5), and any other statutory provision of this State, all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any

bank or bank holding company other than call reports and profit and loss statements, whether obtained through examination or otherwise, except published statements, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Banking Commissioner or any officer or employee of said Department. Further provided that no such information shall be divulged to any member of the Finance Commission, nor shall any member of the Finance Commission be given access to such files and records of the Banking Department; provided, however, that the Banking Commissioner may disclose to the Finance Commission~~[-or either section thereof]~~ or to the State Banking Board information, files and records pertinent to any hearing or matter pending before such Commission ~~[or either section thereof]~~ or such Board. Further provided that upon request, the Banking Commissioner may disclose to a Federal Reserve Bank any information relative to its members, and shall permit it access to any files and records or reports relating to its members. Further provided that the Banking Commissioner may, in his discretion, if he deems it necessary or proper to the enforcement of the laws of this State or the United States, and to the best interest of the public, divulge such information to any other department of the State or National Government, or any agency or instrumentality thereof.

SECTION 27. Article 11, Chapter II, The Texas Banking Code (Article 342-211, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11. VIOLATION OF DUTY BY BANKING COMMISSIONER AND OTHERS—PENALTY. If the Banking Commissioner or any officer or employee of the Banking Department shall give advance notice of any call to be made pursuant to Article 9 of this chapter; or divulge information or permit access to any file or record of the Banking Department in violation of Article 10 of this chapter; or knowingly be or become indebted to, or financially interested in, any state or private bank, directly or indirectly; or purchase any asset belonging to any state or private bank in the hands of the Banking Commissioner for purposes of liquidation, he shall be deemed guilty of a misdemeanor in office, and shall upon conviction be fined not exceeding Two Hundred Dollars (\$200), and forfeit his office or employment.

SECTION 28. Article 12, Chapter II, The Texas Banking Code (Article 342-212, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 12. COMPLAINTS. 1. The Banking Commissioner shall prepare information of consumer interest describing the regulatory functions of the Banking Department and describing the Department's procedures by which consumer complaints are filed with and resolved by the Department. The Banking Commissioner shall make the information available to the general public and appropriate state agencies.

2. The Banking Commissioner shall keep an information file about each complaint filed with the Banking Commissioner relating to any entity regulated by the Banking Department.

3. If a written complaint is filed with the Banking Commissioner relating to any entity regulated by the Banking Department, the Banking Commissioner, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 29. Sections 1 and 2, Article 13, Chapter II, The Texas Banking Code (Article 342-213, Vernon's Texas Civil Statutes), are amended to read as follows:

1. The Banking Commissioner or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

2. The Banking Commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Banking Department employees must be based on the system established under this section.

SECTION 30. Article 1, Chapter III, The Texas Banking Code (Article 342-301, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. POWERS. Subject to the provisions of this Code, five (5) or more persons, a majority of whom are residents of this state, may incorporate a state bank, with any one or more of all the following powers:

(a) To receive time and demand deposits at interest or without interest; to lend money with or without security at interest; and to buy, sell and discount bonds, negotiable instruments and other evidences of indebtedness;

(b) To act as fiscal agent or transfer agent and in such capacity to receive and disburse money and to transfer registered and countersigned certificates of stock, bonds or other evidences of indebtedness;

(c) To act as trustee under any mortgage or bond issue and to accept and execute any trust not inconsistent with the laws of this state;

(d) To act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator and, although without general depository powers, as depository for any moneys paid into court;

(e) To purchase, invest in, and sell bills of exchange, bonds, mortgages and other evidences of indebtedness, and to lend money and to charge and collect interest thereon in advance or otherwise;

(f) To receive savings deposits with or without the payment of interest;

(g) To receive time deposits with or without the payment of interest;

(h) To issue, sell and negotiate notes, bonds and other evidences of indebtedness, and, in addition, to issue and sell, for cash or on an installment basis, investment certificates, creating no relation of debtor and creditor between the bank and the holder, to be retired solely out of specified surplus, reserves, or special retirement account, and containing such provisions relative to yield, retirement, penalties, withdrawal values, and obligations of the issuing bank as may be approved by the Banking Commissioner.

A state bank shall have all incidental powers necessary to exercise its specific powers.

SECTION 31. Sections B, C, D, and E, Article 5, Chapter III, The Texas Banking Code (Article 342-305, Vernon's Texas Civil Statutes), are amended to read as follows:

B. Applicants desiring to incorporate a State bank shall file with the Banking Commissioner an application for charter upon official forms prepared and prescribed by the Banking Commissioner. All persons subscribing to the capital stock of the proposed bank shall sign and verify under oath a statement of such stock subscribed, and which statement shall truly report the number of shares and the amount to be paid in consideration; the names, identity, title and address of any other persons who will be beneficial owners of such stock or otherwise share an interest or ownership in said stock, or who will pay any portion of the consideration; whether said stock is to be pledged as security for any loan; whether a loan has been committed or is intended for the subscription and purchase of said stock, and if so, the name and address of such person or corporation which is intended to loan funds for said purchase; the names of any cosigners, guarantors, partners or other persons liable for the repayment of any loan financing the purchase of such stock. Provided, however, that the verified statement of subscribers to stock shall be confidential and privileged from public disclosure prior to the final determination by the Board of the application for a charter, unless the Board shall find that public disclosure prior

to public hearing and final determination of the charter application is necessary to a full development of the factual record.

C. The Banking Commissioner shall require deposit of such charter fees as are required by law and shall proceed to conduct a thorough investigation of the application, the applicants and their personnel, and the charter conditions alleged. The actual expense of such investigation and report shall be paid by the applicants, and the Banking Commissioner may require a deposit in an estimated amount, the balance to be paid in full prior to hearing of the application. A written report of the investigation shall be furnished to the State Banking Board and shall be made available to all interested parties at their request.

D. Upon filing of the application, the Banking Commissioner shall promptly set the time and place for public hearing of the application for charter, giving the applicants reasonable notice thereof. Before the 10th day preceding the day on which the hearing is held, the Banking Commissioner shall publish notice of the hearing in a newspaper of general circulation in the county where the proposed bank is to be located. If a protest of the application is not filed, the Banking Commissioner may cancel the hearing, and if the Banking Commissioner does so, the Board shall vote to determine whether the necessary conditions set out in Section A of this article have been established, based on the application. If the Board votes to deny the application, the Banking Commissioner shall notify the applicant and the applicant may request a hearing on the application not later than the 30th day after the date on which the notice is sent to the applicant. After full and public hearing the Board shall vote and determine whether the necessary conditions set out in Section A above have been established. Should the Board, or a majority of the Board, determine all of the said conditions affirmatively, then the application shall be approved; if not, then the application shall be denied. If approved, and when the Banking Commissioner receives satisfactory evidence that the capital has been paid in full in cash, the Banking Commissioner shall deliver to the incorporators a certified copy of the Articles of Association, and the bank shall come into corporate existence. Provided however, that the State Banking Board may make its approval of any application conditional, and in such event shall set out such condition in the resolution granting the charter, and the Banking Commissioner shall not deliver the certified copy of the Articles of Association until such condition has been met, after which the Banking Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the Articles of Association.

E. The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governing contested cases do not apply to charter applications filed for the purpose of assuming the assets and liabilities of any bank deemed by the Banking Commissioner to be in an unsafe condition.

SECTION 32. Article 7, Chapter III, The Texas Banking Code (Article 342-307, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7. CERTIFICATE OF AUTHORITY—POSTING—REVOCATION OF CHARTER. No state bank may do business until it receives a certificate of authority from the Banking Commissioner, which shall not be delivered until it has elected the officers and directors named in the application for charter or other officers and directors approved by the Banking Commissioner; shall have adopted by-laws approved by the Banking Commissioner; and shall have complied with all the other requirements of this Code relative to the incorporation of state banks.

If any state bank does not open and actually engage in business within three months after the granting of its charter, or conditional approval of application for charter, the Banking Commissioner may so inform the State Banking Board which may in its discretion forfeit the charter or cancel its conditional approval of application for charter, without any judicial action.

Each state bank shall keep its certificate of authority posted in its lobby at a point accessible to the public.

SECTION 33. Article 8, Chapter III, The Texas Banking Code (Article 342-308, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8. MERGER—TRUST POWERS. Any two or more state banks, or if national banks are hereafter authorized by the laws of the United States to participate in such a merger, any one or more state banks and any one or more national banks domiciled in this State may, with the approval of the Banking Commissioner and the written consent of the owners of record of two-thirds of the capital of each of said banks, be merged. Said merging banks shall file with the Banking Commissioner:

(1) A statement of the plan of merger approved by the board of directors of each merging bank, by a majority vote of the qualified directors.

(2) Certificate of merger stating the facts required by Article 4 of this chapter and executed and acknowledged by a majority of the qualified directors of each merging bank.

The Banking Commissioner shall thereupon investigate the condition of the merging banks and if he finds that the state bank which will result from the merger (hereafter called the "resulting bank") will be solvent and its capital unimpaired; that it will have adequate capital structure; that such merger does not violate the anti-trust laws of this state; and that the resulting bank has in all respects complied with the laws of this State relative to the incorporation of State banks, he may approve such merger, and, if he so approves, he shall deliver to the resulting bank a certified copy of the certificate of merger, which certificate shall constitute the charter and articles of association of the resulting bank. The resulting bank shall be deemed a continuation in entity and identity of each of the banks involved in the merger; shall be subject to all the liabilities, obligations, duties and relations of each merging bank; and shall without the necessity of any conveyance, assignment or transfer become the owner of all of the assets of every kind and character formerly belonging to the merging banks; further, provided, that if any merging bank shall at the time of the merger be acting as trustee, guardian, executor, administrator, or in any other fiduciary capacity, the resulting bank shall, without the necessity of any judicial action or action by the creator of such trust, continue such office, trust or fiduciary relationship and shall perform all of the duties and obligations and exercise all of the powers and authority connected with or incidental to such fiduciary relationship in the same manner as though the resulting bank had been originally named or designated as such fiduciary.

The naming or designating by a testator, or the creator of a living trust, of any one of the merging banks to act as trustee, guardian, executor or in any other fiduciary capacity shall be considered the naming or designating of the bank resulting from the merger.

A stockholder may dissent from the merger by following the procedure provided by Article 5.12, Texas Business Corporation Act. That procedure applies to a merger under this article, as if the state bank were a corporation organized under the Texas Business Corporation Act.

SECTION 34. Article 9, Chapter III, The Texas Banking Code (Article 342-309, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 9. REORGANIZATION—INCORPORATION TO TAKE OVER BUSINESS OF OTHER BANKS—TRUST POWERS. A state bank may be incorporated to take over the business of any incorporated bank or banks, state or national, as a step in the reorganization of such bank or banks, (which bank or banks, whether one or more, will be hereafter referred to as the "reorganizing bank"), and shall, subject to the provisions of this article, be authorized to purchase assets from the reorganizing bank and as consideration therefor, assume all

liabilities, known or unknown, of the reorganizing bank, other than its liability to stockholders as such.

Persons desiring to incorporate a state bank under the provisions of this article shall proceed in the manner provided in Article 5 of this Chapter, and in addition, shall file with the Banking Commissioner:

(1) The proposed contract whereby the state bank is to purchase the assets from and assume the liabilities of the reorganizing bank, as above mentioned.

(2) Contracts, if any, whereby the proposed state bank is to purchase for cash the whole or any part of the right of any or all of the stockholders of the reorganizing bank to receive liquidating dividends upon liquidation of the reorganizing bank, which contracts shall expressly provide that they shall be binding and effective only in event the reorganizing bank is placed in voluntary liquidation within ten (10) days of the granting of the application for the charter applied for. Such contracts shall be executed on behalf of the proposed bank by the persons applying for the charter.

If the Banking Commissioner, after investigation, determines that the proposed bank, if incorporated, will, after its capital has been paid in full and all contracts above mentioned finally consummated, be solvent, its capital adequate and unimpaired, that such reorganization is to the best interest of the reorganizing bank, its depositors, creditors and stockholders and the public in general, and that upon incorporation such bank will have in all other respects complied with the law, he shall recommend to the State Banking Board that the charter be granted.

If the State Banking Board concurs in the findings of the Banking Commissioner, it shall grant the application, and the Banking Commissioner shall deliver a certified copy of the articles of association in the manner provided in Article 5 of this chapter. Provided, however, that the Banking Commissioner shall not deliver a certificate of authority until the contracts above mentioned have been fully consummated, and the requirements of Article 7 of this chapter have been met. The state bank so incorporated shall be deemed a reorganization of the reorganizing bank, and a continuation of such bank in entity and identity, subject to all of its liabilities, obligations, duties and relations, save and except its liability to stockholders as such, and shall pay and perform each and every obligation, duty and liability of the reorganizing bank in exactly the same manner as the reorganizing bank was obligated to do; further provided that if the reorganizing bank was at the time of incorporation of the new state bank, named or acting as guardian, trustee, executor, administrator or in any other fiduciary capacity, such state bank shall, without the necessity of any judicial action, or action by the creator of such trust, continue the trusteeship or other fiduciary relation and perform all of the duties and obligations of the reorganizing bank and exercise all the powers and authority relative thereto; and neither the reorganization of such bank, nor any liquidation of such bank in connection therewith, shall be deemed a resignation or refusal to act. The naming or designating by a testator or the creator of a living trust of the reorganizing bank to act as trustee, guardian, executor, or in any other fiduciary capacity shall be considered the naming or designating of the bank resulting from the reorganization.

The new state bank shall give notice of its assumption of the liabilities of the reorganizing bank by publishing notice thereof once each week for a period of two (2) weeks in some newspaper of general circulation published in the county of its domicile, or in event no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county. The first notice shall be published within ten (10) days after the delivery of the certificate of authority to such bank.

SECTION 35. Article 10, Chapter III, The Texas Banking Code (Article 342-310, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. PURCHASE OF ASSETS OF ANOTHER BANK—DISBURSING AGENT. Any state bank may, with the consent of the Banking Commissioner, purchase the whole or any part of the assets of any other state bank or of any national bank domiciled in this State, and may hold the purchase price and any additional funds delivered to it by the selling bank in trust for or as a deposit to the credit of the selling bank. The purchasing bank may act as agent of the selling bank in disbursing the funds so held in trust or on deposit by paying the depositors and creditors of the selling bank, provided that if the purchasing bank acts under written contract of agency which specifically names each depositor and creditor and the amount to be paid each, and if such agency is confined to the purely ministerial act of paying such depositors and creditors the amounts due them as determined by the selling bank and reflected in the contract of agency and involves no discretionary duties or authority other than the identification of the depositors and creditors named, and if such contract is approved by the Banking Commissioner, then the purchasing bank may rely upon such contract of agency and the instructions included therein, and shall not be in any way liable or responsible for any error made by the selling bank in determining its liabilities, the depositors and creditors to whom such liabilities are due, or the amounts due such depositors and creditors; nor liable or in any way responsible for any preference which may result from the payments made pursuant to such contract of agency and the instructions included therein. Further provided that, in event the selling bank should, at any time after such sale of assets, be closed and come into the hands of the Banking Commissioner or, if a national bank into the hands of a receiver, then the purchasing bank shall pay to the Banking Commissioner as statutory liquidator or to the receiver of such national bank the balance of the funds held by it in trust or on deposit for the selling bank, not theretofore paid to the depositors and creditors of the selling bank, and shall thereupon stand discharged of any and all liabilities, obligations or responsibilities to the selling bank, its receiver, the Banking Commissioner as its statutory liquidator, or to the depositors, creditors or stockholders thereof. Provided further that payment to any depositor or creditor of the selling bank of the amount to be paid him under the terms of the contract of agency may be effected by the purchasing bank opening an account in the name of such depositor or creditor, crediting such account with the amount to be paid the depositor or creditor under the terms of such agency contract, and mailing a duplicate deposit ticket evidencing such credit to such depositor or creditor at his address as reflected by the records of the selling bank, or delivering it to him personally, and the relation of debtor to creditor shall thereupon arise between the purchasing bank and such depositors and creditors to the extent and only to the extent of the credit reflected by such deposit tickets. Further provided, that if any such depositor or creditor checks upon the credit so created, or if he does not within sixty (60) days of the mailing or the personal delivery of such deposit ticket protest the transaction and demand payment from the selling bank, he shall be deemed to have ratified the transaction and to the extent of the credit so created to have accepted the obligation of the purchasing bank as reflected by said deposit ticket in satisfaction of the obligation of the selling bank, and the obligation of the selling bank to the extent of such credit shall be deemed paid and satisfied within the meaning of this article.

SECTION 36. Article 12, Chapter III, The Texas Banking Code (Article 342-312, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 12. AMENDMENT OF ARTICLES OF ASSOCIATION—RIGHTS OF STOCKHOLDERS UPON INCREASE IN CAPITAL—STOCK OPTION PLANS. Subject to the provisions of this Code, any state bank may amend its articles of association for any lawful purpose.

If the owners of record of two-thirds of the capital stock, at any regular meeting of stockholders, or any special meeting called for that purpose, vote to amend the

charter, the board of directors shall prepare, execute in the manner provided for the execution of articles of association, and file with the Banking Commissioner an amendment to the articles of association. If the Banking Commissioner finds that the amendment is not violative of law and does not prejudice the interest of depositors and creditors or the public, he shall approve such amendment and deliver to the bank a certified copy thereof, and said amendment shall thereupon become effective; provided, however, that if a state bank does not have the power to receive demand deposits, no amendments of its articles of association adopting any power provided under Subsection (a), (b), (c), (d), or (f) of Article 1 of this Chapter and no amendment changing the domicile of any state bank shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for charter. Any state bank may amend its articles of association to extend its corporate existence for a perpetual period or for any period of years.

Each stockholder of a state bank shall be entitled to his proportionate part of any increase of stock effected out of surplus funds or undivided profits, and shall be entitled to subscribe for his proportionate share of any capital increase to be paid in cash; provided, however, the bank may arrange for the disposition of fractional shares by those entitled thereto or pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined. Each stockholder or his assignee, in event he elects to assign such rights of subscription, shall subscribe for and pay the amount of such subscription to the corporation within ten (10) days after the stockholders have adopted such amendment, otherwise the board of directors may allocate the unsubscribed or unpaid portion of the increase among the other stockholders or otherwise as they deem to be the best interest of the bank.

With prior approval of the owners of record of two-thirds of the capital stock, shares of stock in a bank, which are created by a capital increase, may be allocated to and purchased by the bank out of its surplus which is not certified or out of its undivided profits to be held by the bank for fulfilling the requirements of an officer or employee stock option or bonus plan, whereby officers or employees, or both, of the bank are given options to purchase or a bonus of shares of the bank's capital stock at a specified price, subject to the following requirements and restrictions:

The number of shares so held shall not, at any time, exceed five percent (5%) of the total number of shares outstanding in the hands of other stockholders. Employee benefit plans, including employee stock option plans, stock bonus plans, restricted stock option or bonus plans, or any other plans, the sole purpose of which is to compensate employees of the bank for services rendered to the bank, authorized under this Article, may not extend beyond a period of ten years from the date of issuance. No officer or employee who owns or controls more than five percent (5%) of the bank's capital stock shall be eligible to participate or to continue participation in a stock option plan authorized by this Article.

SECTION 37. Article 13, Chapter III, The Texas Banking Code (Article 342-313, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 13. CONVERSION OF STATE BANK INTO NATIONAL BANK. The owners of record of two-thirds of the capital of any solvent state bank may, by vote or written consent, authorize its officers and directors to take such action as may be necessary under the laws of the United States to convert it into a national bank, provided, however, that the state bank shall not cease to be a state bank subject to the supervision of the Banking Commissioner until (1) the Banking Commissioner has been given written notice of the intention to convert for at least thirty (30) days, (2) such bank has published notice thereof at least once a week for four (4) weeks in a newspaper of general circulation published in the county of its domicile, or, if no such newspaper is published in the county, in an adjacent county,

(3) the bank has filed with the Banking Commissioner a transcript of the conversion proceedings, sworn to by a majority of the qualified directors and a publisher's certificate showing publication of the notice above provided, and (4) such bank has received a certificate of authority to do business as a national bank.

SECTION 38. Article 1, Chapter IV, The Texas Banking Code (Article 342-401, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. TRANSFER OF STOCK—NOTICE TO BANKING COMMISSIONER. Shares of stock in a state bank shall be personal property and transferable only upon its books, and it shall be the duty of the officers of a state bank to transfer such stock upon its books at the request of the transferee, supported by a transfer in writing or other legally effective transfer.

If title to more than ten percent (10%) of the total number of shares of stock outstanding is transferred, the transferee shall, within fifteen (15) days thereafter, give the Banking Commissioner written notice of the date of the transfer, the number of shares transferred and the consideration therefor, and the names and addresses of the persons or corporations from whom and to whom the stock was transferred. Where the title to the stock so transferred is to be held by the transferee in the capacity of agent or trustee, the transferee shall, within fifteen (15) days after title to the stock is transferred, give the Banking Commissioner written notice of the name and address of each principal or each beneficiary having an interest therein. Information obtained hereunder by the Banking Commissioner shall be confidential and shall not be disclosed by the Banking Commissioner or any officer or employee of the Banking Department, except that the Banking Commissioner may, in his discretion, if he deems it necessary or proper to the enforcement of the laws of this state or the United States, and to the best interest of the public divulge such information to any department of the state or national government, or any agency or instrumentality thereof.

Any transferee who willfully and knowingly fails or refuses to give the Banking Commissioner notice as required by this Article, shall, upon conviction, be fined in an amount not exceeding One Thousand Dollars (\$1,000), or be confined in jail for a period not to exceed six (6) months, or both.

SECTION 39. Article 1a, Chapter IV, The Texas Banking Code (Article 342-401a, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1a. TRANSFER OF STOCK—REVIEW BY BANKING COMMISSIONER. A. No person may acquire any voting security of a state bank or of any corporation or other entity owning voting securities of a state bank if, after the acquisition, the person would own or possess the power to vote twenty-five per cent (25%) or more of the voting securities of the bank nor may any person acquire an equivalent interest in a private bank unless an application is filed with the Banking Commissioner for his review of the proposed transaction and for his action, if any, as provided in this Article.

B. The application shall be on a form prescribed by the Banking Commissioner and shall be made under oath. The application shall, except to the extent expressly waived by the Banking Commissioner, contain the following information:

(1) the identity, personal history, business background and experience, and financial condition of each person by whom or on whose behalf the acquisition is to be made, including a description of the managerial resources and future prospects of each acquiring party and a description of any material pending legal or administrative proceedings in which he is a party;

(2) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these

funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with such persons;

(4) any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company, or to make any other major changes in its business or corporate structure or management;

(5) the terms and conditions of any offer, invitation, agreement, or arrangement under which any voting security will be acquired and any contract affecting such security or its financing after it is acquired; and

(6) such other information that the Banking Commissioner by rule shall require to be furnished in an application as well as any information that the Banking Commissioner orders to be included in the particular application being filed.

The applicant shall pay the appropriate filing fee when he files the application. A "person" proposing to acquire voting securities subject to the provisions of this Article includes an individual, two (2) or more individuals acting in concert, any type of partnership, corporation, syndicate, trust, or any other organization, or any combination of the foregoing, and the information required by the Banking Commissioner may be required of each member of the group, as directed by the Banking Commissioner. Information obtained by the Banking Commissioner under this Article is confidential and may not be disclosed by the Banking Commissioner or any officer or employee of the Banking Department, except that the Banking Commissioner may in his discretion, if he deems it necessary or proper to the enforcement of the laws of this state or the United States and to the best interest of the public, divulge such information to any department, agency, or instrumentality of the state or federal government, and provided that notice of the application, its date of filing, and the identity of all parties thereto shall be submitted to the Texas Register by the Banking Commissioner upon receipt of the said application and shall be published in the next issue thereof following the date such information is received.

C. The Banking Commissioner shall issue an order denying an application if he finds that:

(1) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the banking industry in any part of the State, unless he also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not in violation of any law of this State or the United States;

(2) the poor financial condition of any acquiring party might jeopardize the financial stability of the bank being acquired;

(3) plans or proposals to liquidate or sell the bank or its assets are not in the best interest of the bank;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the bank;

(5) the bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this State after the acquisition;

(6) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the Banking Commissioner; or

(7) the applicant is not acting in good faith.

D. If an application filed under this Article is not denied by the Banking Commissioner within thirty (30) days after it is filed, the transaction may be consummated. The Banking Commissioner may, before the expiration of the thirty-day period, give the applicant written notice that the application will not be denied, in which case the transaction may be consummated. Any agreement entered into by the applicants and the Banking Commissioner as a condition that the application will not be denied is enforceable against the bank and is considered for all purposes an agreement under the provisions of this Code.

E. If the Banking Commissioner issues an order denying an application, the applicant is entitled to a hearing if he requests one in writing no later than the thirtieth (30th) day after the day the application is filed or the fifteenth (15th) day after the day the application is denied, whichever date is later. After hearing the matter, the Banking Commissioner shall, within thirty (30) days, enter a final order either affirming his denial or withdrawing his denial of the application. An applicant may not appeal the Banking Commissioner's denial of an application or order affirming his denial until a final order is entered. Any applicant herein shall have the right to appeal such final order to the district court of Travis County, Texas, and not elsewhere, against the Banking Commissioner of Texas as defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Banking Commissioner shall not be required to give any appeal bond in any cause arising hereunder. The filing of an appeal pursuant to this Article shall not stay the order of the Banking Commissioner adverse to the applicant.

F. This Article does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise by way of foreclosure on default in the payment of a debt previously contracted for in good faith, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of such foreclosure to the Banking Commissioner;

(2) transactions governed by Article 8, 9, or 10 of Chapter III of this Code;

(3) transactions requiring the prior approval of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. Sec. 1841, et seq., and 26 U.S.C.A., Sec. 1101, et seq.);

(4) acquisitions by the owner of more than fifty per cent (50%) of the voting securities of the bank; or acquisitions of less than ten per cent (10%) of the voting securities of the bank in any one (1) year by the owner of twenty-five per cent (25%) or more, but not more than fifty per cent (50%), of those voting securities, provided that such acquisition does not result in the owner of twenty-five per cent (25%) or more acquiring fifty per cent (50%) or more of the voting securities;

(5) acquisitions or transfers by operation of law or by will or intestate succession, provided that the person acquiring such securities does not vote the securities so acquired without having given written notice of acquisition to the Banking Commissioner; or

(6) any transaction which the Banking Commissioner by rule or order may exempt as not being contemplated by the purposes of this Article or the regulation of which is not necessary or appropriate to achieve the objectives of this Article.

No provision of this Section shall excuse or diminish the notice requirements provided elsewhere in this Code.

G. No provision of this Article shall be construed to prevent the Banking Commissioner from investigating, commenting upon, or seeking to enjoin or set aside any transfer of voting securities, whether the transfer is included within this Article or not, if the Banking Commissioner deems the transfer to be against the public interest.

H. If it appears to the Banking Commissioner that any person has committed or is about to commit a violation of this Article or any rule or order of the Banking Commissioner adopted under it, the Attorney General on behalf of the Banking Commissioner may apply to the district court of Travis County for an order enjoining the violation and for any other equitable relief as the nature of the case may require.

I. Any person who willfully and knowingly makes a materially false or misleading statement to the Banking Commissioner with respect to the information required herein may be fined in an amount not exceeding Two Thousand Dollars (\$2,000), or be confined in jail for a period not to exceed one (1) year, or both. This provision is cumulative of other remedies contained herein.

J. The Banking Commissioner by rule shall adopt a schedule of fees for the filing of applications and the holding of hearings. The schedule may be graduated so that those applications and hearings that are more difficult to review or administer will require a larger fee. An application fee is not refundable on denial of the application, but the Banking Commissioner may refund a portion of the fee if the application is withdrawn before he completes review of it. Fees collected under this Article shall be retained by the Department and may be used only for expenses of the Department.

SECTION 40. Article 3, Chapter IV, The Texas Banking Code (Article 342-403, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. BY-LAWS—ADOPTION AND AMENDMENT. The stockholders of a state bank shall adopt by-laws which may be amended at any regular annual meeting of the stockholders, or, if the purpose of the meeting is stated in the notice, at any special meeting of the stockholders called for that purpose. Neither the by-laws nor any amendment thereto shall be effective until filed with the Banking Commissioner and approved by him. The stockholders may delegate to the board of directors the power to alter, amend, or repeal the by-laws or to adopt new by-laws, and the stockholders may rescind a board action with regard to the by-laws at a meeting at which the amendment of by-laws is permitted under this article. The by-laws may contain any provisions for the regulation and management of the affairs of the bank not inconsistent with law or the Articles of Association.

SECTION 41. Section 3, Article 4, Chapter IV, The Texas Banking Code (Article 342-404, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. The number of directors may be changed from time to time within the limits prescribed by Sections 1 and 2 of this article, without amendment of the charter, by resolution adopted at any regular meeting of the stockholders or any special meeting of stockholders called for the purpose of electing directors, which resolution shall be spread on the minutes of the meeting, and a certified copy shall be filed with the Banking Commissioner, for which filing no fee shall be charged.

SECTION 42. Article 6, Chapter IV, The Texas Banking Code (Article 342-406, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6. DIRECTORS' ELECTION—TERM—FAILURE TO ELECT—VACANCY—FAILURE TO FILL VACANCY—ADDITION OF DIRECTORS. Each state bank shall, at its regular annual meeting of stockholders, or at some adjournment thereof, or at a special meeting of stockholders called for such purpose, elect directors who shall serve until the next regular annual meeting of stockholders.

A director shall hold office until the director's successor has been elected and qualified, unless removed according to the provisions of the Articles of Association or the by-laws. The Articles of Association or by-laws may provide that at a meeting of the stockholders called expressly for that purpose, a director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors, subject to any further restriction on removal contained in the Articles of Association or the by-laws. If any state bank fails to elect directors within (60) days after its regular annual meeting, the Banking Commissioner may, after ten (10) days notice by mail, call a meeting of stockholders for the purpose of electing directors, and if the stockholders do not elect directors at the meeting so called, the Banking Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code.

Any vacancy on the board of directors may be filled by a majority vote of the remaining directors, and any director so appointed shall hold his office until the next election; provided if the vacancy reduces the number of directors to less than that required by Article 4 of this Chapter, it shall be filled within thirty (30) days from the date it occurs and upon the failure to fill such vacancy within the above prescribed time limit, the Banking Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code.

A majority of the full board of directors of a state bank, when authorized by resolution adopted at any regular meeting of stockholders or at any special meeting of stockholders called for such purpose, may at any time increase the number of directors of a state bank and appoint persons to fill the resulting positions and the persons so appointed shall serve until the next regular annual meeting of stockholders; provided, however, that the board of directors shall not increase the number of directors by more than two (2) during any one year and the total number of directors shall never exceed the maximum number now or that may hereafter be authorized by law. The resolution of the stockholders, as herein provided, and any action of the board of directors pursuant thereto, shall be spread upon the minutes of the stockholders or directors meeting, as the case may be, and a certified copy shall be filed with the Banking Commissioner, for which filing no fee shall be charged. This provision shall be cumulative of all existing laws relating to increasing the number of directors of a state bank and the filling of the positions thereby created.

SECTION 43. Section A, Article 9a, Chapter IV, The Texas Banking Code (Article 342-409a, Vernon's Texas Civil Statutes), is amended to read as follows:

A. An action required or permitted by this Code to be taken at a meeting of the shareholders of a state bank may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all of the shareholders entitled to vote on the action. Unless the Articles of Association or by-laws provide otherwise, an action required or permitted to be taken at a meeting of the board of directors or a committee of the board may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all the members of the board or committee. A consent under this article has the same force and effect as a unanimous vote at a meeting, and this may be stated in articles or a document or instrument filed with the Banking Commissioner.

SECTION 44. Article 10, Chapter IV, The Texas Banking Code (Article 342-410, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. DIRECTORS, OFFICERS AND EMPLOYEES—LIABILITY—REIMBURSEMENT FOR EXPENSES. Except as otherwise provided by statute, directors and officers of state banks shall be liable for financial losses sustained by state banks to the extent that directors and officers of other corporations are now responsible for such losses in equity and common law. Any

officer or director who does not approve of any act or omission of the board, and desires to relieve himself from any personal liability for such act or omission shall promptly announce his opposition to such act or omission and cause such opposition to be spread upon the minutes of the directors' meeting. If for any reason such opposition is not spread upon the minutes of the directors' meeting, he shall promptly report the facts to the Banking Commissioner.

Any person may be indemnified or reimbursed by a state bank, through action of its board, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is a party by reason of his being or having been a director, officer or employee of said bank or having served as a director, officer, partner, venturer, proprietor, trustee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, at the request of the bank. The board may authorize the purchase by the bank of insurance covering the indemnification of directors, officers or employees and may prospectively indemnify directors, officers, or employees. If there is a compromise of such an action or threatened action, there shall be no indemnification or reimbursement for the amount paid to settle the claim or for reasonable expenses incurred in connection with such claim without the vote, or the written consent, of the owners of record of a majority of the stock of the bank. No such person shall be indemnified or reimbursed if he has been finally adjudged to have been guilty of, or liable for, willful misconduct, gross neglect of duty, or a criminal act. This article shall not bar any right or action to which such person would be entitled at common law or any other statute of this State.

SECTION 45. Sections 1, 2, 3, 4, and 5, Article 12, Chapter IV, The Texas Banking Code (Article 342-412, Vernon's Texas Civil Statutes), are amended to read as follows:

1. If the Banking Commissioner finds that an officer, director or employee of a State or private bank, or the State or private bank itself acting through any authorized person, has committed any of the following violations or practices:

- (a) violates the provisions of this Code or any other law or regulation applicable to State or private banks; [or]
- (b) refuses to comply with the provisions of this code or any other law or regulation applicable to State or private banks; [or]
- (c) wilfully neglects to perform his duties, or commits a breach of trust or of fiduciary duty;[-]
- (d) ~~commits~~ [Commits] any fraudulent or questionable practice in the conduct of the bank's business that endangers the bank's reputation or threatens its solvency; [or]

- (e) refuses to submit to examination under oath; [or]
- (f) conducts business in an unsafe or unauthorized manner; or
- (g) violates any conditions of its charter or of any agreement entered with the Banking Commissioner or the Banking Department; then in such event the Banking Commissioner shall give notice in writing to such bank and the offending officer, director or employee, stating the particular violations or practices complained of, and the Banking Commissioner shall call a meeting of the directors of said bank and lay before them such findings and demand a discontinuance of such violations and practices as have been found.

2. If the Banking Commissioner shall find that an order to cease and desist from such actions is necessary and in the best interests of the bank involved and its depositors, creditors and stockholders, then at the directors' meeting above provided or within thirty (30) days thereafter the Banking Commissioner may serve on the State or private bank, its board of directors, and any offending officers, directors or employees, a written order to cease and desist from the violations and practices

enumerated therein and to take such affirmative action as may be necessary to correct the conditions resulting from such violations or practices. Said cease and desist order shall be effective instantaneously if the Banking Commissioner finds that immediate and irreparable harm is threatened to the bank or~~;~~ its depositors, creditors, or stockholders; otherwise, said order shall state the effective date, not less than ten (10) days after delivery or mailing of the notice thereof. Unless the bank or directors shall file a notice of appeal with the ~~[Banking Section of the]~~ Finance Commission within ten (10) days after such delivery or mailing of notice, whichever is the case, the order shall be final. A copy of said order shall be entered upon the minutes of the directors, who shall thereafter certify to the Banking Commissioner in writing that each has read and understood the order.

3. If the Banking Commissioner subsequently finds by examination or other credible evidence that the offending officer, director or employee has continued such violations or practices as previously charged and found by the Banking Commissioner, after notice and demand made under Paragraph 1 above, and further finds that removal from office is necessary and in the best interests of such bank and its depositors, creditors and stockholders, then the Banking Commissioner may serve such officer, director or employee with an order of removal from office. Said order shall state the grounds for removal with reasonable certainty and shall state the effective date of removal, not less than ten (10) days after delivery or mailing of the notice thereof. Unless the bank, the directors or the person removed shall file a notice of appeal with the ~~[Banking Section of the]~~ Finance Commission within ten (10) days after such delivery or mailing of notice, whichever is the case, the order of removal shall be effective and final and said person shall thereafter be prohibited from further holding office or employment by, or participating in the affairs of, the said State or private bank. A copy of said order shall be entered upon the minutes of the directors, and an officer shall acknowledge receipt of such order and certify to the Banking Commissioner that such person has been removed from office.

4. Upon the timely filing of an appeal the ~~[Banking Section of the]~~ Finance Commission shall set a time and place for hearing such appeal, giving reasonable notice thereof to the appellants. The Finance Commission ~~[Banking Section]~~ may adopt such rules or procedure as may be necessary to govern the fair hearing and adjudication of the questions appealed, subject to the following conditions:

(a) Appeal from Cease and Desist Order. If the Finance Commission ~~[Banking Section]~~ finds that appellants have committed one or more of the violations or practices charged by the Banking Commissioner, and further finds that an order to cease and desist from said actions is necessary and in the best interests of the bank involved and its depositors, creditors and stockholders, the said order of the Banking Commissioner shall be affirmed and made final and effective. If the findings are otherwise, the Finance Commission ~~[Banking Section]~~ shall set aside the order of the Banking Commissioner.

(b) Appeal from Order of Removal. If the Finance Commission ~~[Banking Section]~~ finds that appellant has committed one or more of the violations or practices charged by the Banking Commissioner sufficient to justify his removal, and further finds that an order of removal from office is necessary and in the best interests of the bank involved and its depositors, creditors and stockholders, the said order of the Banking Commissioner shall be affirmed and made final and effective. If the findings are otherwise, the Finance Commission ~~[Banking Section]~~ shall set aside the order of the Banking Commissioner.

5. After a cease and desist order or an order of removal becomes effective and final, should a State or private bank or its board of directors or any duly authorized officer of said bank fail or refuse to comply with such an order, then the Banking Commissioner may, upon notice, assess a penalty against said State or private bank

in an amount not to exceed Five Hundred Dollars (\$500) per day for each day the bank is in violation of said order of the Banking Commissioner or the ~~[Banking Section of the]~~ Finance Commission. Failure to remit any penalty so assessed shall subject the bank to a suit for collection by the Attorney General of Texas to be instituted in the District Court of Travis County, Texas. In addition to the remedy above provided the Attorney General of Texas, upon the relation of the Banking Commissioner, may bring suit in the District Court of Travis County, Texas, against any bank in violation of the final orders of the Banking Commissioner or the Finance Commission ~~[Banking-Section]~~ to enjoin the further violation of said orders and the violations and practices charged by the Banking Commissioner as the grounds for such orders.

SECTION 46. Article 14, Chapter IV, The Texas Banking Code (Article 342-414, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. OFFICERS, EMPLOYEES, DIRECTORS—FALSE ENTRIES AND STATEMENTS—PENALTY. Any officer, director or employee of a state or private bank who knowingly makes a false entry upon the books or records or in any report or statement of such bank, or knowingly gives a false answer to any question propounded to him while being examined under oath by the Banking Commissioner, Deputy Banking Commissioner, Departmental Examiner, or any Examiner, shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than ten (10) years, or both.

SECTION 47. Article 15, Chapter IV, The Texas Banking Code (Article 342-415, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 15. OFFICERS, DIRECTORS, EMPLOYEES, STOCKHOLDERS—DESTRUCTION OF BANK RECORDS—PENALTY. Any officer, director, employee or stockholder of a state or private bank who, for the purpose of concealing any fact or information from the Banking Commissioner, Deputy Banking Commissioner, Departmental Examiner or any Examiner, or for the purpose of suppressing any evidence material to any pending or anticipated suit or legal proceeding, abstracts, removes, destroys, or conceals any book or record of such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars (\$5,000), or confined in the penitentiary not more than five (5) years, or both. Destruction or disposition of any book or record of a state or private bank after the period which it is required to be preserved by any rule or regulation of the Finance Commission ~~[Banking-Section]~~ under Article 13 of Chapter I shall raise a rebuttable presumption that this article has not been violated.

SECTION 48. Sections (a), (b), and (e), Article 1, Chapter V, The Texas Banking Code (Article 342-501, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) No state bank shall, without prior written consent of the Banking Commissioner, invest an amount in excess of sixty per cent (60%) of its four primary capital accounts in a domicile (including land and building) and furniture and fixtures.

(b) A state bank shall assign to the portion of its domicile represented by the land on which the banking house is located an original book value of:

(1) the cost of the land when purchased; or

(2) if the land was contributed to the bank, the fair market value of the land at the time of the contribution as determined by the Banking Commissioner.

(e) The portion of the domicile represented by the banking house shall be depreciated each year not less than two and one-half per cent (2-1/2%) of its cost to the bank until that portion of the domicile is charged down to One Dollar (\$1), and the furniture and fixtures shall be depreciated each year not less than ten per cent (10%) of their cost to the bank until said account is charged down to One Dollar

(\$1), provided that the Banking Commissioner may permit a lesser percentage to be charged off during any year.

SECTION 49. Section (e), Article 2, Chapter V, The Texas Banking Code (Article 342-502, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) If such real estate acquired for the use of the bank in future expansion of its banking house is not improved and occupied as a banking house within three (3) years from the date of its acquisition, the bank shall sell or otherwise dispose of such property; provided that the Banking Commissioner may for good cause shown grant an extension of time for a period of one year or more.

SECTION 50. Article 3, Chapter V, The Texas Banking Code (Article 342-503, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. ENGAGING IN COMMERCE—EXCEPTIONS. No state bank shall invest its funds in trade or commerce by buying and selling goods, wares, merchandise or chattels or by owning or operating an industrial plant except when necessary to avoid a loss on a loan or investment previously made in good faith. Provided that to the extent that national banks may now or hereafter have authority to do so, a state bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property.

Rental payments collected by the bank under the lease agreement shall be considered to be rent and shall not be deemed to be interest or compensation for the use of money loaned.

The aggregate of the bank's investment in properties so acquired shall not exceed limits prescribed by the ~~[Banking Section of the]~~ Finance Commission as they may be adjusted from time to time, and property so acquired shall not be retained more than six (6) months beyond the duration of the original lease period agreed to by the customer for whom the property was acquired, except with written permission of the Banking Commissioner.

A state bank may invest not more than ten per cent (10%) of its capital stock and certified surplus in shares of stock of a corporation that have preference over any other class of stock issued by the corporation as to the payment of dividends, or that entitles the holder to cumulative, noncumulative, or partially cumulative dividends of the corporation, if the stock has been approved by the Banking Commissioner. A state bank may not invest more than five per cent (5%) of its capital stock and certified surplus in the stock of any one issuer.

SECTION 51. Article 4, Chapter V, The Texas Banking Code (Article 342-504, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. REAL ESTATE LOANS—LIMITATIONS—EXCEPTIONS. State banks are authorized to make loans upon the security of real estate and invest their funds in obligations secured by real estate subject to such rules and regulations as may be imposed by the ~~[Banking Section of the]~~ Finance Commission of Texas relating to margin requirements, repayment programs or terms, and the aggregate in the various types of classes of real estate loans.

SECTION 52. Sections (a) and (d), Article 7, Chapter V, The Texas Banking Code (Article 342-507, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In this Article:

(1) "Loans and extensions of credit" includes all direct or indirect advances of funds to a person that are made on the basis of an obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person, and to the extent specified by the Banking Commissioner, the term includes a liability of a state bank to advance funds to or on behalf of a person under a contract.

(2) "Person" includes an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government, or agency, instrumentality, or political subdivision of a sovereign government or other similar entity or organization.

(d) The Banking Commissioner may prescribe rules to administer and carry out this Article, including rules to define or further define terms used in this Article or to establish limits or requirements other than those specified in this Article for particular classes or categories of loans or extensions of credit. The Banking Commissioner may determine if a loan putatively made to a person shall, for purposes of this Article, be attributed to another person.

SECTION 53. Sections (a) and (c), Article 13, Chapter V, The Texas Banking Code (Article 342-513, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Unless otherwise permitted by rule or regulation promulgated by the Finance Commission [banking section]: (1) a state bank may invest not more than ten per cent (10%) of its capital and certified surplus in a subsidiary corporation; and (2) no state bank shall invest more than five per cent (5%) of its total assets in subsidiary corporations.

(c) The Finance Commission [banking section], through resolution [adopted by not less than four affirmative votes], may promulgate general rules and regulations not inconsistent with the constitution and statutes of this state, and from time to time amend same, which rules and regulations shall be applicable alike to all subsidiary corporations.

SECTION 54. Article 1, Chapter VI, The Texas Banking Code (Article 342-601, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 1. SURPLUS—CERTIFIED SURPLUS—MANDATORY TRANSFERS. Each state bank shall maintain an account to be known as "surplus," any part of which account may, from time to time, be certified, which portion of the surplus shall be known as "certified surplus," before declaring any dividend each state bank shall transfer to "certified surplus" an amount not less than ten per cent (10%) of the net profits of such bank earned since the last dividend was declared; provided, however, that this article shall not require a transfer to certified surplus of a sum which would increase the certified surplus to more than the capital of the bank. Except to absorb losses in excess of undivided profits and uncertified surplus, such certified surplus shall not be reduced without the prior written consent of the Banking Commissioner. The Board of Directors shall, in connection with each transfer to or reduction in the certified surplus, promptly file with the Banking Commissioner its certificate reflecting such transfer or reduction. The certified surplus accounts maintained by state banks on the effective date of this Act, shall be deemed "certified surplus" within the purview of this article.

SECTION 55. Article 2, Chapter VI, The Texas Banking Code (Article 342-602, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. LIABILITY LIMIT—EXCEPTIONS. No state bank shall without the prior written consent of the Banking Commissioner be indebted or liable for an amount in excess of its capital and certified surplus except on account of the following:

1. Money on deposit with or collected by it.
2. Bills of exchange, bankers acceptances, checks or drafts drawn against money actually on deposit to the credit of the bank or due to said bank.
3. Liability to stockholders on account of the capital stock, surplus and undivided profits.
4. Liabilities arising under or pursuant to the provisions of the Federal Deposit Insurance Corporation Act, the Federal Reserve Act, the Federal

Agricultural Credit Act of 1923, or pursuant to any or all amendments to any or all of said acts.

5. Indebtedness evidenced by investment certificates or certificates of indebtedness.

6. Liability on endorsement of notes, bills of exchange or other evidences of indebtedness actually owned by said bank and sold or endorsed with or without recourse, provided said sale or endorsement shall have been previously approved by the board of directors of said bank.

7. Liabilities to other banks arising out of short-term loan transactions when such liabilities are incurred for the purpose of fulfilling cash reserve requirements and have settlement periods of less than one week.

SECTION 56. Article 7, Chapter VI, The Texas Banking Code (Article 342-607, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7. CAPITAL NOTES OR DEBENTURES—CAPITAL DEFINED. With the prior written approval of the Banking Commissioner any state bank may, at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures, which shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors or the holders of investment certificates.

With the prior approval of the owners of record of two-thirds of the capital stock and the prior written approval of the Banking Commissioner any state bank may issue and sell its convertible capital notes or debentures, which shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors or the holders of investment certificates.

The term "capital" as used in this article relating to solvency of state banks shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any state bank and sold by it to the Reconstruction Finance Corporation or any other corporation or individual. The capital stock of any such bank may be deemed to be unimpaired when the amount of capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the Banking Commissioner. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital (disregarding the notes or debentures to be retired) must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the bank. Provided, in the event the net profits are not sufficient to meet the interest and retirement payments on the capital notes or debentures issued prior to the effective date of this Act, the Banking Commissioner may require the bank's stockholders to pay into the bank in cash an amount sufficient to meet the deficiency. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank, and shall not be held liable for assessments to restore impairment in the capital of such bank.

SECTION 57. Article 8, Chapter VI, The Texas Banking Code (Article 342-608, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8. LIMITATION UPON WITHDRAWALS. Upon the request of any state bank which is suffering from or threatened with unusual and excessive withdrawals due to financial conditions, panic or crisis, the Banking Commissioner may, if he deems such action necessary in order to prevent unnecessary loss to or preference among the depositors and creditors of such bank, and to preserve the financial structure of the bank and its usefulness to the community, limit the right of withdrawal by or payment to depositors and creditors, and other persons to whom the bank is liable, provided, however, that such limitations shall be uniform in their application to each class of liability, and shall not defer any person in his right to full payment or withdrawal for more than ten (10) days.

SECTION 58. Article 2, Chapter VII, The Texas Banking Code (Article 342-702, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. **BROKERED FUNDS DEFINED—REPORTING—BANKING COMMISSIONER'S AUTHORITY.** For the purpose of this article, "brokered funds" are funds accepted by a bank on which a fee in money is paid or agreed to be paid, directly or indirectly, either to the depositor of such funds or a third party by such bank or a third party, in addition to any interest to be paid under the contract of repayment.

In the event that any bank shall accept brokered funds as defined herein, it shall forthwith notify the Banking Commissioner in writing of the acceptance of such funds, the depositor and his address, any loans, if any, made in consideration of or conditioned upon said deposit, and listing the borrower, his address, and any collateral securing said loan, and such other information concerning said deposit and loan as the Banking Commissioner may require and on such forms as may be prescribed by the Banking Commissioner. The Banking Commissioner may further require any bank to report such brokered funds and loans as above described, if any, which have been accepted or made previous to the effective date of this Act.

Provided, however, should the Banking Commissioner find from examination or other evidence that a bank is being operated in an unsafe manner, or insolvency of the bank is threatened, or the continued acceptance of brokered funds will threaten the liquidity of the bank, then the Banking Commissioner shall have the authority to act as follows:

(a) to issue an order to cease and desist from further accepting any brokered funds, or otherwise to regulate the amount of such funds which may be accepted or the rate of interest to be paid, and

(b) to issue a written order stating that after the effective date thereof all brokered funds accepted by said bank shall be and are hereby classified as the issuance, sale and negotiation of "notes, bonds, and other evidence of indebtedness" by the bank as provided in Paragraph (h), Article 1, Chapter III of such Code, and not as deposits received by the bank as provided in Paragraph (a), Article 1, Chapter III of the Banking Code of 1943 as amended. In the event that brokered funds are accepted after issuance of such order, it shall be the duty of said bank to state in the contract of repayment that in the event of liquidation of the issuing bank, the owner and holder of such contract of repayment shall be considered and treated as a common creditor and not as a depositor of the bank, and a cash reserve of ten percent (10%) of the total outstanding brokered funds shall be maintained against such funds, in the same manner as cash reserves are maintained against demand deposits and time deposits.

Provided further, that the Banking Commissioner may exercise any or all of the powers above provided, which shall be cumulative of any other powers and remedies provided elsewhere in this Code.

SECTION 59. Sections 1, 2, 3, 4, 6, 9, and 10, Article 1A, Chapter VIII, The Texas Banking Code (Article 342-801A, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. **DEFINITION OF TERMS.** (a) In respect of a bank, "unsafe condition" shall mean and include, and the conditions to which this article is applicable include, but are not limited to, any one or more of the following circumstances or conditions.

(1) if a bank's capital is impaired, or impairment of capital is threatened, or

(2) if a bank violates the provisions of this code or any other law or regulation applicable to State or private banks, or

(3) if a bank conducts any fraudulent or questionable practice in the conduct of the bank's business that endangers the bank's reputation or threatens its solvency, or

(4) if a bank conducts business in an unsafe or unauthorized manner, or

(5) if a bank violates any conditions of its charter or any agreement entered with the Banking Commissioner or the Banking Department.

(b) "Exceeded its Powers" shall mean and include, but is not limited to, the following circumstances:

(1) if a bank has refused to permit examination of its books, papers, accounts, records, or affairs by the Banking Commissioner of Texas, his deputy, or duly commissioned examiners, or

(2) if a bank has neglected or refused to observe an order of the Banking Commissioner to make good, within the time prescribed, any impairment of its capital.

(c) "Consent" includes and means a written agreement by the bank to either supervision or conservatorship under this article.

Sec. 2. **CONDITIONS FOR SUPERVISION BY BANKING COMMISSIONER.** If upon examination or at any other time it appears to or is the opinion of the Banking Commissioner that any bank is in an unsafe condition (as defined herein) and its condition is such as to render the continuance of its business hazardous to the public or to its depositors and creditors, or if such bank appears to have exceeded its powers (as defined herein) or has failed to comply with the law, or if such bank gives its consent (as defined herein), then the Banking Commissioner shall upon his determination (a) notify the bank of his determination, and (b) furnish to the bank a written list of the Banking Commissioner's requirements to abate his determination, and (c) if the Banking Commissioner makes a further determination to supervise he shall notify the bank that it is under the supervision of the Banking Commissioner and that the Banking Commissioner is invoking the provisions of this article. If placed under supervision such bank shall comply with the lawful requirements of the Banking Commissioner within such time as provided in the notice of the Banking Commissioner, subject however to the provisions of this article. In the event of such bank's failure to comply within such time the Banking Commissioner may appoint a conservator as hereafter provided.

Sec. 3. **PROHIBITED ACTS DURING PERIOD OF SUPERVISION.** During the period of supervision the Banking Commissioner may appoint a supervisor to supervise such bank and may provide that the bank may not do any of the following things during the period of supervision, without the prior approval of the Banking Commissioner or his supervisor:

- (1) Dispose of, convey or encumber any of its assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property; or
- (6) Incur any debt, obligation or liability.

Sec. 4. **CONSERVATORSHIP PROCEEDINGS.** After the period of supervision specified by the Banking Commissioner for compliance, if it is determined that such bank has failed to comply with the lawful requirements of the Banking Commissioner, then upon due notice and hearing, or by consent of the bank, the Banking Commissioner may appoint a conservator, who shall immediately take charge of such bank and all of the property, books, records, and effects thereof. The conservator shall conduct the business of the bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the Banking Commissioner may direct. During the pendency of conservatorship the conservator shall make such reports to the Banking Commissioner from time to time as may be required by the Banking Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and

recover any assets or property of such bank, including claims or causes of action belonging to or which may be asserted by such bank, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such bank which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. The Banking Commissioner, or any duly appointed deputy, may be appointed to serve as the conservator. If the Banking Commissioner, however, is satisfied that such bank is not in condition to continue business in the interest of its depositors or creditors, under the conservator as above provided, the Banking Commissioner may proceed with an appropriate remedy provided by any other provision of this Code.

Sec. 6. REVIEW AND STAY OF ACTION. During the period of supervision and during the period of conservatorship, the bank may request the Banking Commissioner or in his absence, the duly appointed deputy for such purpose, to review an action taken or proposed to be taken by the supervisor or conservator, specifying wherein the action complained of is believed not to be in the best interests of the bank, and such request shall stay the action specified pending review of such action by the Banking Commissioner or his duly appointed deputy. Any order entered by the Banking Commissioner appointing a supervisor and providing that the bank shall not do certain acts as provided in Section 3 and Section 4 of this article, any order entered by the Banking Commissioner appointing a conservator, and any order by the Banking Commissioner following the review of an action of the supervisor or conservator as hereinabove provided shall be immediately reviewed by the ~~[Banking Section of the]~~ Finance Commission upon the filing of an appeal by the bank. The ~~[Banking Section of the]~~ Finance Commission may stay the effectiveness of any order appealed from, pending its review of such order. Such appeal shall have precedence over all other business of a different nature pending before the ~~[Banking Section of the]~~ Finance Commission; and all matters and evidence pertaining to the bank's condition and the subject appeal shall be presented to the ~~[Banking Section of the]~~ Finance Commission in a closed hearing. Upon hearing the Finance Commission ~~[Banking Section]~~ shall promptly render a decision which may affirm or terminate the order appealed from, modify the order, continue or discontinue such supervision, conservatorship or other order in connection therewith, or enter such other order as is appropriate and consistent with this article. The ~~[Banking Section of the]~~ Finance Commission shall make such other rules and regulations with regard to such appeals and their consideration as it deems advisable. Any bank dissatisfied with any order rendered by the ~~[Banking Section of the]~~ Finance Commission under this article shall have the right to appeal to the district court in the manner prescribed elsewhere in this Code, which order shall be considered final for the purpose of such appeal.

Sec. 9. ADMINISTRATIVE ELECTION OF REMEDIES. If the Banking Commissioner determines to act under authority of this article, or is directed by the ~~[Banking Section of the]~~ Finance Commission to act under this article, the sequence of his acts and proceedings shall be as set forth herein. However, it is a purpose and substance of this article to authorize administrative discretion—to allow the Banking Commissioner and the ~~[Banking Section of the]~~ Finance Commission administrative discretion in the event of unsound banking operations—and in furtherance of that purpose, the Banking Commissioner is hereby authorized to proceed with regulation either under this article or under any other applicable article or law, or under this law in conjunction with other law, either as such law is now existing or as is hereafter enacted, and it is so provided.

Sec. 10. RULES AND REGULATIONS. The ~~[Banking Section of the]~~ Finance Commission shall be empowered to adopt and promulgate such reasonable

rules and regulations as may be necessary for the augmentation and accomplishment of this Act, including its purposes.

SECTION 60. Article 2, Chapter VIII, The Texas Banking Code (Article 342-802, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2. VOLUNTARY LIQUIDATION OF SOLVENT STATE AND PRIVATE BANK—CANCELLATION OF CHARTER—RESUMPTION OF BUSINESS PROHIBITED. A solvent state or private bank may be closed and liquidated upon the written consent or vote of the owners of record of two thirds of its capital, which consent, or the resolution adopted by the stockholders, shall specify the date when such bank is to be closed and shall designate one or more individuals to act as the liquidating agent, who shall conduct the liquidation under the supervision of the board of directors, after giving suitable bond as prescribed by said board and approved by the Banking Commissioner. Prior to the closing of such state or private bank, the directors shall file with the Banking Commissioner a transcript of the proceedings authorizing the closing of the bank. Notice to its depositors and creditors to present their claims shall be published once a week for thirteen (13) weeks, beginning within ten (10) days after the closing of the bank, in a newspaper of general circulation published in the county of the bank's domicile, or if no such newspaper is published in said county, in an adjacent county. Upon presentment of lawful claims, the bank shall pay its depositors and creditors, provided that such payment may be effected through a disbursing agent as authorized under Article 10 of Chapter 3 of this Code. The liquidating agent shall make a written report to the stockholders at each annual meeting, a copy of which, signed and sworn to by the liquidating agent, shall be filed with the Banking Commissioner. The stockholders at any regular or special meeting may remove the liquidating agent and name a successor. The Banking Commissioner may from time to time examine the liquidating bank and may, if the depositors and creditors are not paid upon presentment of their lawful claims, or if, prior to the payment of all depositors and creditors, he finds any condition which would authorize the closing of the bank were it not in voluntary liquidation, take possession of the assets and liquidate the same in the manner herein provided for the liquidation of insolvent state or private banks.

Upon the expiration of six (6) months from the first publication of notice as above provided, the bank shall file with the Banking Commissioner an affidavit sworn to by a majority of the qualified directors stating that all depositors and creditors who have presented their claims have been paid the amounts due them, and listing those depositors and creditors who have not presented their claims, giving their addresses as shown by the books of the bank and the amounts respectively due each. Such affidavit shall be accompanied by a publisher's certificate showing publication of notice as above provided, and by a sum equal to the aggregate amount due the non-claiming depositors and creditors. The Banking Commissioner shall hold such money for the benefit of said depositors and creditors in the manner provided in Article 15 of this Chapter.

At any time after the filing of such affidavit, the board of directors may distribute the remaining assets among the shareholders in proportion to their ownership of stock of the bank and shall thereafter file with the Banking Commissioner an affidavit sworn to by a majority of the qualified directors showing such distribution. The filing of such affidavit and the approval thereof by the Banking Commissioner shall have the effect of cancelling the charter of the bank without the necessity of any judicial action.

No state or private bank which has been closed pursuant to the provisions of this article shall resume business or reopen without the prior written consent of the Banking Commissioner.

SECTION 61. Article 3, Chapter VIII, The Texas Banking Code (Article 342-803, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3. CLOSING STATE OR PRIVATE BANK—BY BANKING COMMISSIONER—BY DIRECTORS. Whenever the Banking Commissioner, through examination, finds that the interests of depositors and creditors of a state or private bank are seriously jeopardized through its insolvency or imminent insolvency and that it is to the best interest of such depositors and creditors that the bank be closed and its assets liquidated, he may close and liquidate the bank, unless its board of directors close the bank and place it in his hands for liquidation.

SECTION 62. Article 3a, Chapter VIII, The Texas Banking Code (Article 342-803a, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3a. SALE OF CERTAIN ASSETS

Sec. 1. The board of directors of a state bank, with the approval of the Banking Commissioner, may cause the bank to sell all or a substantial portion of the bank's assets without shareholder approval if:

(1) the Banking Commissioner, through examination, finds that the interests of depositors and creditors of the bank are seriously jeopardized because of the bank's insolvency or imminent insolvency and that it is in the best interests of the depositors and creditors that certain assets of the bank be sold; and

(2) the Federal Deposit Insurance Corporation or its successor has expressly consented to and approved the transaction and has agreed to provide assistance to the prospective buyer under 12 U.S.C. Section 1823(c) or a comparable provision of law.

Sec. 2. A sale under this article must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of the bank's liabilities to depositors;

(2) all of the bank's liabilities for salaries of the bank's employees incurred before the date of the sale; and

(3) the obligations incurred by the Banking Commissioner and fees and assessments due to the Department arising out of the supervision of the bank or the sale.

Sec. 3. This article does not affect the right of the Banking Commissioner to take any other appropriate action permitted by Article 1a or 3 of this chapter or any other provision of this code.

SECTION 63. Article 4, Chapter VIII, The Texas Banking Code (Article 342-804, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. POSTING OF NOTICE—CREATION OF LIENS, TRANSFERS AND PAYMENT AFTER CLOSING. Immediately after the closing of any state or private bank by its directors or by the Banking Commissioner under the provisions of Article 3 of this chapter, the Banking Commissioner shall place an appropriate sign to that effect at the main entrance of the bank, and thereafter no judgment lien, attachment lien or other voluntary lien shall attach to any asset of said bank, nor shall the directors, officers or agents of such bank thereafter have authority to act for or on behalf of said bank or to convey, transfer, assign, pledge, mortgage or encumber any asset thereof, and any attempt by any officer, director or agent to transfer, assign, convey, mortgage or pledge any asset of the bank or to create any lien thereon or in any manner to prefer any depositor or creditor of the bank after the posting of such notice or in contemplation thereof shall be void. The Banking Commissioner immediately after posting the notice at the entrance of such bank shall advise its correspondent banks of its closing. No correspondent shall pay any item drawn on the account of the closed bank which is presented for payment after the receipt of such advice, unless the same has been previously certified.

SECTION 64. Article 4a, Chapter VIII, The Texas Banking Code (Article 342-804a, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4a. PRIORITY OF CLAIMS—PAYMENT. On liquidation of a state or private bank or on execution of a purchase of certain assets and assumption of

certain liabilities of a state bank under Article 3a of this chapter, claims for payment against that state bank have the following priority:

- (1) obligations incurred by the Banking Commissioner, fees and assessments due to the Banking Department, and expenses of liquidation, including any taxes due, all of which may be covered by a proper reserve of funds;
- (2) claims of depositors having an approved claim against the general liquidating account of the bank;
- (3) claims of salaried employees of the bank for salaries that are earned but unpaid at the time the bank is closed or purchased under Article 3a of this chapter;
- (4) claims of general creditors having an approved claim against the general liquidating account of the bank;
- (5) claims otherwise proper that were not filed within the time prescribed by this Code;
- (6) approved claims of subordinated creditors; and
- (7) claims of stockholders of the bank.

SECTION 65. Article 5, Chapter VIII, The Texas Banking Code (Article 342-805, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5. CONTEST OF LIQUIDATION. At any time within two (2) days, excluding legal holidays for banks, after the Banking Commissioner has closed any state or private bank under the provisions of Article 3 of this Chapter, such bank, acting through its directors, may sue in the district court of the bank's domicile to enjoin the Banking Commissioner from liquidating such bank, and the court, or the judge thereof if in vacation, may, without notice or hearing, restrain the Banking Commissioner from liquidating the assets of such bank pending hearing on the merits, and shall, in that event instruct the Banking Commissioner to hold the assets of such bank in his possession pending final disposition of such suit. The Banking Commissioner shall thereupon refrain from liquidating such assets, provided, however, the Banking Commissioner may, with the approval of the district judge, take such action as may be necessary or proper to prevent loss or depreciation in the value of the assets. The court shall, as soon as possible, hear the suit upon its merits and shall enter a judgment (1), enjoining the Banking Commissioner from liquidating the assets of such bank, or (2) refusing such injunction. Appeal shall lie from such judgment as in other civil cases, but the Banking Commissioner, irrespective of the character of judgment entered by the trial court or any supersedeas bond filed, shall retain possession of the assets of such bank pending final disposition on appeal.

SECTION 66. Article 6, Chapter VIII, The Texas Banking Code (Article 342-806, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6. INVENTORY OF ASSETS—CUSTODIA LEGIS—JURISDICTION. Promptly after the Banking Commissioner has acquired possession of the assets of a state or private bank for liquidation, he shall prepare and file in the office of the district clerk of the county of the bank's domicile an inventory of such assets, and the clerk shall assign a cause number to the proceedings so instituted. The assets of the bank shall be deemed to be in the custody of the court in which such proceedings are pending and all suits and orders provided for under this chapter shall be deemed to be in the nature of interventions or orders in said proceedings, of which suits and orders said court shall have exclusive jurisdiction. Provided, however, that during vacation of such court, the judge thereof shall be authorized to enter any of such orders and to conduct any hearing incident thereto.

SECTION 67. Article 7, Chapter VIII, The Texas Banking Code (Article 342-807, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7. RESUMPTION OF BUSINESS—REORGANIZATION. No state or private bank which has been closed under the provisions of Article 3 of this Chapter

shall be reopened unless the contest provided for under Article 5 of this chapter is finally determined adversely to the Banking Commissioner, or unless the Banking Commissioner, acting under order of the district court, shall authorize such reopening by a certificate under the seal of his office. The Banking Commissioner may in such certificate place such limitations upon the right of withdrawal by, or payment of, depositors and creditors of such bank as he may deem necessary to the protection of the depositors and creditors as a whole. Provided, however, that such limitation shall be applicable alike to all unsecured depositors and creditors and shall not defer their right of full withdrawal or payment for more than eighteen (18) months from the date of the reopening of such bank, nor defer any secured depositor or creditor to any extent without his written consent.

The limitations upon the right of withdrawal or payment set out in the certificate of the Banking Commissioner shall when the bank is reopened be binding upon all unsecured depositors and creditors and all secured depositors and creditors who have assented thereto in writing. The State of Texas, or any county, city, common or independent school district or any other political subdivision of this State, as depositor or creditor, may by the proper administrative official or officials, board, or tribunal agree to such limitations, if, in his or their opinion such agreement is to the best interest of all concerned.

SECTION 68. Article 8, Chapter VIII, The Texas Banking Code (Article 342-808, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8. NOTICE TO DEPOSITORS AND CREDITORS. Upon final determination that any state or private bank is to be liquidated by the Banking Commissioner, he shall publish notice for the time and in the manner prescribed in Article 2 of this Chapter, provided, however, that the Banking Commissioner's notice shall require all depositors and creditors to file written proofs of claim with the Banking Commissioner at his office in Austin, Texas, and the Banking Commissioner shall within thirty (30) days after the first publication of such notice mail a similar notice to each depositor or creditor shown upon the books of the bank at his address as reflected thereby.

SECTION 69. Article 9, Chapter VIII, The Texas Banking Code (Article 342-809, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 9. PRESENTATION OF CLAIM. Each depositor, creditor or other person asserting any claim of any character against a state or private bank in the process of liquidation by the Banking Commissioner, shall within eighteen (18) months of the date of the first publication of notice, as provided for in the preceding article, present his claim in writing to the Banking Commissioner at his office in Austin, Texas. Such claims shall state the facts upon which the same are based; shall set out any right of priority of payment or other specific rights asserted by the claimant and shall be signed and sworn to by the claimant.

SECTION 70. Article 10, Chapter VIII, The Texas Banking Code (Article 342-810, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10. APPROVAL—CLASSIFICATION AND REJECTION. Within three (3) months after receipt of any claim against a state or private bank which is in his hands for liquidation, the Banking Commissioner shall, unless such time is extended by written agreement with the claimant, approve or reject such claim in whole or in part. If he approves such claim, or any part thereof, he shall classify the same and enter such claim and his action thereon in a claim register. If the Banking Commissioner rejects any claim in whole or in part, or if he denies any right of priority of payment or any other right asserted by the claimant, he shall notify the claimant of his action by registered mail.

SECTION 71. Article 11, Chapter VIII, The Texas Banking Code (Article 342-811, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11. **APPEAL BY CLAIMANT.** Any claimant may, within three (3) months from the date of mailing of notice by the Banking Commissioner as provided by the preceding Article, sue upon such claim in the district court; otherwise the action of the Banking Commissioner shall be final and not subject to review. The trial of such suit shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases.

SECTION 72. Article 12, Chapter VIII, The Texas Banking Code (Article 342-812, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 12. **POWERS OF BANKING COMMISSIONER—SALE OF ASSETS, COMPROMISES AND AGREEMENTS.** Pursuant to the order of the district court, entered with or without hearing, the Banking Commissioner may sell any of the assets of a state or private bank in his hands for liquidation; may borrow money and pledge the whole or any part of such assets of such bank to secure the debt created; may compromise or compound any bad or doubtful claim held by or asserted against such bank; and may enter into any other kind or character of contract or agreement on behalf of such bank which he deems necessary or proper to the management, conservation or liquidation of its assets and all parties interested in the affairs of such bank shall be bound and precluded by the action of the Banking Commissioner. Provided that said court, if it deems it advantageous or proper, may require notice and hearing before entering any order, and in that event shall, by order, fix the time and place of the hearing and prescribe the character of notice to be given thereof. Further provided that said court, in its discretion, and subject to such limitations as it may prescribe, may by general order authorize the Banking Commissioner (a) to compound or compromise any claim or debt involving not more than Ten Thousand Dollars (\$10,000) held by or asserted against the bank, and (b) to sell all chattels belonging to the bank.

SECTION 73. Article 13, Chapter VIII, The Texas Banking Code (Article 342-813, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 13. **EXPENSES OF ADMINISTRATION.** The expense of liquidation of state or private banks shall be paid out of the assets thereof, subject to review and approval by order of the district court. The Banking Commissioner is authorized to employ such special agents, attorneys and other assistants as may be necessary or proper to the administration of the affairs of such banks, and shall, if he deems it to be in the interest of economy and efficiency, establish a central office unit to assist in the supervision of the liquidation of said banks.

SECTION 74. Article 14, Chapter VIII, The Texas Banking Code (Article 342-814, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. **DIVIDENDS—DELAYED CLAIMS.** The Banking Commissioner may from time to time in the course of the liquidation of a state or private bank, upon order of the district court, pay dividends to those depositors and creditors who have established their claims, provided that no final dividend shall be paid within eighteen (18) months of the date of the first publication of notice as prescribed in Article 8 of this Chapter. All claims filed after the declaration and payment of any dividend and prior to the expiration of such eighteen (18) months shall, if approved, participate in dividends previously paid before any additional dividend is declared. Claims which are not presented within said eighteen (18) months period shall not participate in any dividend or distribution of assets until after full payment of all approved claims presented during such period.

SECTION 75. Article 15, Chapter VIII, The Texas Banking Code (Article 342-815, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 15. **FINAL DIVIDEND—REPORT—DISPOSITION OF ASSETS—DISCHARGE.** At any time after the expiration of eighteen (18) months from the first publication of notice as specified in Article 8 of this Chapter, after the Banking Commissioner has liquidated all of the assets of a bank capable of

liquidation or has realized sufficient funds from such liquidation to pay the costs thereof, to pay all claims which have been filed and established, and leave funds available to provide for the payment of all non-claiming depositors and creditors, the Banking Commissioner shall, acting under order of the district court, declare and pay a final dividend. The Banking Commissioner shall deposit in one or more state banks all funds hereafter available for the benefit of non-claiming depositors and creditors. All unclaimed dividends and all funds hereafter available for non-claiming depositors and creditors, together with all funds held pursuant to the provisions of Article 540 of the Revised Civil Statutes of Texas, (which latter funds shall be transmitted by the State Treasurer to the Banking Commissioner, together with a list of the depositors and creditors for whose benefit the same is held), shall be deposited by the Banking Commissioner in one or more State banks for the benefit of the depositors and creditors entitled thereto. The Banking Commissioner shall pay any depositor or creditor, upon his demand, any amount so held for his benefit. In event the Banking Commissioner is in doubt as to the identity of any claimant or his right to the funds thus held, he shall reject the claim and notify the claimant by registered mail. The claimant shall, within three (3) months after mailing of such notice by the Banking Commissioner, institute suit against the Banking Commissioner in the district court to recover such funds, which suit shall be in the nature of an action in rem governed by the rules of procedure and appeal applicable to civil cases and the judgment therein shall be binding upon all persons interested in such funds. If such suit is not filed within the time prescribed, the rejection of the Banking Commissioner shall be final. After paying a final dividend as above provided and doing each and every act necessary or proper in connection with the liquidation of the assets of such bank for the benefit of the depositors and creditors, the Banking Commissioner shall file in the district court his final report of such liquidation, and said court shall by order fix and designate a time and place when and where such report shall be heard, and direct the Banking Commissioner to give such notice thereof as the court may deem proper. If said court, after such notice and hearing shall find that the affairs of said bank have been administered properly and in accordance with law it shall approve such report, and the order of approval shall have the force and effect of forfeiting and cancelling the corporate charter of such bank, vesting title to the remaining assets, if any, in the stockholders of said bank, and releasing and discharging the Banking Commissioner from any further duty, obligation or liability in connection with the administration of the affairs of such bank, and thereafter no person shall have or maintain any claim, suit or action against the Banking Commissioner individually or in his capacity as statutory liquidator of such bank other than suits to recover unclaimed deposits as above provided. The district court may, in such order, direct the Banking Commissioner as to the disposition of the books, records and remaining assets, if any, of such bank and may designate a trustee to whom the Banking Commissioner shall deliver physical possession of the same, and who, under the supervision of said court shall administer or liquidate such assets for the benefit of the former stockholders of such bank.

SECTION 76. Article 16, Chapter VIII, The Texas Banking Code (Article 342-816, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 16. DEPOSIT OF FUNDS BY BANKING COMMISSIONER IN BANKS—PREFERRED PAYMENT. The Banking Commissioner shall, except where otherwise provided by law, deposit all funds coming into his hands in one or more state banks, and such funds so deposited by the Banking Commissioner pursuant to the provisions of law shall constitute preferred claims against the assets of such bank in event of liquidation.

SECTION 77. Section 2(a), Article 3, Chapter IX, The Texas Banking Code (Article 342-903, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If a state bank or national bank acquires certain assets and assumes certain liabilities of a failed state bank or national bank whose principal banking building is located in a different county in this state, the bank may establish one or more branches in the locations, if any, where the failed bank owned or operated facilities authorized by this article at any time during the six months before the date of the failure, if the banking commissioner determines that:

- (1) the bank proposed to be acquired is a failed bank;
- (2) the acquisition is necessary to protect the financial interests of the acquired bank's depositors and creditors; and
- (3) the terms of the acquisition are acceptable to each federal agency having jurisdiction over the transaction.

SECTION 78. Section 4, Article 3, Chapter IX, The Texas Banking Code (Article 342-903, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. Any bank adversely affected by a violation of this article may, and the Attorney General, upon request of the Banking Commissioner, shall bring suit in a court of competent jurisdiction to enjoin a violation of this article. The party who prevails in such proceeding shall recover costs of suit and reasonable attorney's fees.

SECTION 79. Section (a), Article 10, Chapter IX, The Texas Banking Code (Article 342-910, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Banking Commissioner, with the approval of a majority of the Finance Commission and the Governor of Texas, may proclaim a financial moratorium for and invoke a uniform limitation on withdrawal of deposits of every character from all banks within the State. Any bank refusing to comply with any written proclamation of the Banking Commissioner, signed by a majority of the members of the Finance Commission and the Governor of Texas, shall forfeit its charter, if it is a State chartered bank; or forfeit its right to continue to do business, if it is a private bank; or forfeit any and all rights it may have under State law, if it is a national bank, to act as reserve agent for any State chartered bank and to act as depository of any State, county, municipal or other public funds, and such funds shall be immediately withdrawn by the depositor on order of the Banking Commissioner and shall not be deposited thereafter in said national bank without the written approval of the Banking Commissioner.

SECTION 80. Subsections 1 and 2, Section (b), Article 10, Chapter IX, The Texas Banking Code (Article 342-910, Vernon's Texas Civil Statutes), are amended to read as follows:

1. Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, a bank's offices or particular bank operations, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to conduct the particular bank operations or open the bank's offices on any business or banking day or, if having opened, to close such offices or suspend and close the particular bank operations during the continuation of such emergency, even if the Banking Commissioner has not issued a proclamation of emergency. The office or operations so closed shall remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; however, in no case shall such office or operations remain closed for more than 48 consecutive hours, excluding other legal holidays, without receiving the approval of the Banking Commissioner. A bank closing an office or operations pursuant to the authority granted under this article shall give as prompt notice of its action as conditions will permit and by any means available, to the Banking Commissioner.

2. Whenever the Banking Commissioner is of the opinion that an emergency exists, or is impending, in this State or in any part or parts of this State, he may, by proclamation, authorize banks located in the affected area or areas to close any part or all of their offices or operations. In addition, if the Banking

Commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular bank operation, but not banks located in the area generally, he may authorize the particular bank or banks so affected, to close or to suspend and close a particular bank operation. The office or bank operation so closed shall remain closed until the Banking Commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that the office or bank operation, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

SECTION 81. Article 11.1, Chapter IX, The Texas Banking Code (Article 342-911.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 11.1. APPEALS FROM ORDERS OF STATE BANKING BOARD AND FINANCE COMMISSION. Any person, firm or corporation who is a party to, or is necessarily aggrieved by, any final order, ruling or judgment of the State Banking Board or the ~~[Banking Section of the]~~ Finance Commission shall have the right to appeal by filing a suit to set aside such order, ruling or judgment in the District Court of Travis County, Texas, within thirty (30) days following the date of rendition of such order, ruling or judgment. Provided, that in such cases the substantial evidence rule shall apply and govern the trial, as is the common practice in cases of appeal from administrative orders and as construed by the courts of this State. Pending final judgment of the court the order shall remain in effect, unless otherwise stayed or enjoined by the court upon proper application.

SECTION 82. Article 12, Chapter IX, The Texas Banking Code (Article 342-912, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 12. ACQUISITION OF BANK OR HOLDING COMPANY — NOTICE TO BANKING COMMISSIONER — RECOMMENDATIONS OF BANKING COMMISSIONER

Sec. 1. A state bank, a private bank, a national bank in the state, or a bank holding company seeking, directly or indirectly, to acquire or acquire control of a state bank, a national bank in the state, or a bank holding company owning or controlling a state bank or a national bank located in the state, that submits an application for approval to the Board of Governors of the Federal Reserve System pursuant to Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842), shall transmit a copy of the application, as and when finally accepted for filing by the board of governors, to the banking commissioner.

Sec. 2. If the application is made by a state or private bank or involves the direct or indirect acquisition of the voting shares or assets of a state or private bank, including a bank holding company that owns or controls, directly or indirectly, a state or private bank, the banking commissioner, on receipt of the notice prescribed by Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)), shall respond in writing within the time limit prescribed by that subsection. The response shall set forth the views and recommendations of the banking commissioner concerning the application. If the banking commissioner shall determine that the application does not evidence compliance with the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Sec. 2901 et seq.) following his review according to the criteria in Section 6 of this Article 12, he shall include that determination in his response; provided, however, that the banking commissioner shall not be required to disapprove the application as a result of such determination. If the banking commissioner disapproves the application, he shall, with the assistance of the attorney general, present evidence at the hearing held pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)).

Sec. 3. If the application is made by a national bank located in the state or involves the direct or indirect acquisition of the voting shares or assets of a national

bank located in the state, including a bank holding company that owns or controls, directly or indirectly, a national bank located in the state, the banking commissioner shall advise the Board of Governors of the Federal Reserve System of any views and recommendations he may have concerning the application and other material before the board of governors in connection with the application. If the banking commissioner shall determine that the application does not evidence compliance with the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Sec. 2901 et seq.) following his review according to the criteria in Section 6 of this Article 12, he shall include that determination in his advice to the board of governors; provided, however, that the banking commissioner shall not be required to recommend to the board of governors that the application be denied because of such determination. If the banking commissioner recommends to the board of governors that the application be denied, he shall request that a hearing pursuant to Subsection (b) of Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(b)) be held. If the board of governors should grant such request, the banking commissioner shall, with the assistance of the attorney general, present evidence at the hearing as hereinabove provided. If the board of governors should deny such request, the banking commissioner is authorized and directed to pursue the remedies available to him as an aggrieved party in accordance with the provisions of Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. Section 1848).

Sec. 4. An out-of-state bank holding company that seeks to take an action specified in Section 1 of this article for which a copy of the application must be filed with the banking commissioner shall also file with the banking commissioner, when it delivers the application:

(1) evidence that the out-of-state bank holding company is authorized to take the action under Article 16 of this chapter;

(2) evidence that the out-of-state bank holding company and each state bank, national bank in this state, and bank holding company being acquired will, after the acquisition, comply with applicable capital adequacy guidelines, and that the consolidated equity capital condition of these banks in this state during the first three years after being acquired will be maintained at least at the level existing immediately prior to the acquisition less the consolidated net loss of these banks, if any;

(3) agreements, subject to any contrary provision of applicable federal law, that while the out-of-state bank holding company directly or indirectly owns or controls any national bank in this state:

(A) a majority of the directors of each national bank shall be residents of the State of Texas, except that directors who are employees or officers or spouses of employees or officers of the bank, out-of-state bank holding company, or an affiliate of the bank or out-of-state bank holding company may not be counted as residents of the State of Texas for the purpose of this paragraph; and

(B) the out-of-state bank holding company will not directly or indirectly own or control:

(i) an institution located in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor performing similar functions, unless the institution is a bank as defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841); or

(ii) an institution located in this state, the deposits of which are insured by the Federal Savings and Loan Insurance Corporation or any successor performing similar functions; and

(4) an agreement to provide such additional information as may be required by rules promulgated by the banking commissioner.

Sec. 5. (a) The banking commissioner shall advise the Board of Governors of the Federal Reserve System that the banking commissioner believes the application

does not comply with Texas law and the banking commissioner shall present evidence at any hearing before the board of governors or pursue the remedies available to the banking commissioner as an aggrieved party in accordance with Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1848) if, on review of the materials filed by an out-of-state bank holding company under Sections 1 and 4 of this article, the banking commissioner believes that:

(1) the out-of-state bank holding company is not authorized to take the proposed action under Article 16 of this chapter;

(2) either:

(i) the evidence submitted does not establish that the out-of-state bank holding company, and each state bank, national bank located in this state, and bank holding company being acquired will, after the proposed acquisition, comply with applicable capital adequacy guidelines and during the first three years after the acquisition maintain the consolidated equity capital condition which existed immediately prior to the acquisition less the consolidated net loss of these banks, if any; or

(ii) the out-of-state bank holding company has not agreed to capitalize, simultaneously with completion of the transaction, any state bank being acquired in an amount sufficient to meet those guidelines; or

(3) the out-of-state bank holding company has not entered into an agreement provided for in Subdivision (3) of Section 4 of this article.

(b) In any hearing or in pursuing remedies under this section, the banking commissioner may request the assistance of the attorney general.

Sec. 6. ~~[(a)]~~ In his review of a bank's compliance with the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.), the banking commissioner is encouraged to give priority to the following criteria:

(1) Continued and increased extension of credit or direct or indirect investment in projects or programs designed to develop or redevelop areas in which persons with low or moderate incomes reside, and designed to meet the credit needs of those low or moderate-income areas or that primarily benefit persons of low and moderate income, as long as those investments are consistent with sound banking practices, policies, and procedures. For the purposes of this review, personal installment loans, loans made to purchase, or loans secured by an automobile shall not be considered qualifying community reinvestment.

(2) Continued and increased investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or businesses that address the needs of the low and moderate-income areas.

(3) Continued and increased investments in residential mortgage loans, home improvement loans, housing rehabilitation loans, and small business or small farm loans originated in low and moderate-income areas, or the purchase of such loans originated in low and moderate-income areas.

(4) Continued and increased investments for the preservation or revitalization of urban or rural communities in low and moderate-income areas.

(5) Continued investments in the obligations of state and local governmental entities, priority to be given where possible to those entities located in the local community or local trade area of each bank.

(6) That there will be no diminution of reasonable availability of banking services to all segments of the public and economy of this state, with special emphasis on economic development and the financing of enterprises to increase employment opportunities.

SECTION 83. Article 13, Chapter IX, The Texas Banking Code (Article 342-913, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 13. ACQUISITION OF NONBANKING INSTITUTION UNDER FEDERAL LAW—NOTICE TO BANKING COMMISSIONER—ORDER AND

APPEAL—PROHIBITION TO ACQUIRE OR CONTROL INSURED BANK UNDER FEDERAL LAW

Sec. 1. A bank holding company doing business in the state that submits an application or notice to the Board of Governors of the Federal Reserve System concerning an acquisition or activity regulated by Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1843), other than an application or notice concerning an activity initiated prior to the effective date of this article, shall transmit a copy of the application or notice, as and when finally accepted for filing by the board of governors, to the banking commissioner. The banking commissioner may on his own motion order a public hearing on the matter. The banking commissioner shall order a hearing if the holding company requests a hearing in writing at the time it transmits the application or notice to the banking commissioner.

Sec. 2. After the close of the hearing, if one is held, the banking commissioner shall disapprove the acquisition or activity unless he finds that it can reasonably be expected to produce benefits to the public, such as greater convenience or increased competition, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Sec. 3. An acquisition or activity is approved if:

(1) the applicant does not request a hearing and the banking commissioner does not, within 30 days after the application or notice is filed, order that a hearing be held; or

(2) a hearing is held and the banking commissioner's final order approves the acquisition or activity.

Sec. 4. The Administrative Procedure and Texas Register Act governs proceedings under this article, except that the final order of the banking commissioner approving or disapproving the acquisition or activity shall be rendered within 30 days after the hearing is closed.

Sec. 5. If it appears to the banking commissioner that any person has engaged in or is about to engage in an acquisition or activity subject to this article without complying with the provisions of this article or in violation of an order of the banking commissioner entered pursuant to this article, the attorney general on behalf of the banking commissioner may apply to the district court of Travis County for an order enjoining the acquisition or activity and for any other equitable relief the nature of the case may require. A "person" subject to the provisions of this section shall include an individual, two or more individuals acting in concert, any type of partnership, corporation, association, syndicate, trust, or any other organization, or any combination thereof.

Sec. 6. (a) For the purpose of this section, "control" means:

(1) the ability or power to vote, directly or indirectly, 25 percent or more of any class of voting securities; or

(2) the ability to control in any manner the election of a majority of a board of directors.

(b) It is unlawful for a bank holding company or any other company, corporation, partnership, business trust, association or similar organization, or any person to acquire, hold, establish, operate, or control an "insured bank" as defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq. or any institution that is eligible to make application to become an insured bank pursuant to Section 5 of the Federal Deposit Insurance Act, if such insured bank or such institution is domiciled in Texas, unless such insured bank or such institution both accepts deposits that the depositor has a legal right to withdraw on demand and engages in the business of making commercial loans.

(c) This subchapter does not apply to any insured bank as defined in Section 3(h) of the Federal Deposit Insurance Act or any institution that is eligible to make

application to become an insured bank pursuant to Section 5 of the Federal Deposit Insurance Act provided such bank or such institution was engaged in business in Texas on or before December 31, 1941.

SECTION 84. Article 14, Chapter IX, The Texas Banking Code (Article 342-914, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 14. SUPERVISION OF BANK HOLDING COMPANIES. (a) The Banking Commissioner has jurisdiction over a bank holding company to the same extent as a state or private bank if the bank with the largest amount of total assets owned by the bank holding company is a state or private bank or if the majority of the combined assets of banks owned by the bank holding company are held by state and private banks. The Banking Commissioner shall accept the Reports of Inspection of the Board of Governors of the Federal Reserve System.

(b) The Banking Commissioner has jurisdiction over an out-of-state bank holding company to enforce an agreement filed with the Banking Commissioner under Article 12 of this chapter.

(c) A bank holding company that knowingly violates or participates in the violation of a provision of Article 12 of this chapter, an agreement filed with the Banking Commissioner under that article, or a regulation or order issued by the Banking Commissioner or the Finance Commission [banking-section] under that article is liable to the state for a civil penalty in an amount, based on the severity of the violation, of not more than \$1,000 per day for each day during which the violation continues. The attorney general, at the request of the Banking Commissioner, shall sue to collect the penalty.

SECTION 85. Sections 1, 2, 3, and 4, Article 3, Chapter XI, The Texas Banking Code (Article 342-1103, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Every trust company shall be subject to regulation by the Banking Commissioner of Texas and shall file with the banking commissioner on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the banking commissioner, showing under oath its assets and liabilities, together with a fee of \$50 for filing; and such statement shall be published in a newspaper of general circulation published in the county in which the trust company is located. The banking commissioner may, for good cause shown, extend the time for filing such statement for not more than 60 days.

Sec. 2. (a) If any trust company fails to comply with the requirements of Section 1 of this article in the manner and within the time required, the company may be assessed a civil penalty by the banking commissioner. The penalty may not exceed \$1,000.

(b) A civil penalty may be assessed only after the trust company charged with a violation of Section 1 of this article has been given an opportunity for a public hearing.

(c) Civil penalties owed under this article may be recovered in a civil action brought by the attorney general at the request of the banking commissioner.

(d) A second failure to file such a statement as required shall be grounds for forfeiture of the charter of the trust company at the suit of the attorney general upon request of the Banking Commissioner.

Sec. 3. The Banking Commissioner shall have authority to examine or cause to be examined each trust company annually or more often if the banking commissioner deems it necessary. Such company shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, the equitable or proportionate cost of the maintenance and operation of the Banking Department, and the enforcement of this chapter. The banking commissioner shall annually determine the fee. Such fees, together with all other fees, penalties, and

revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

Sec. 4. Refusal on the part of any trust company to submit to an examination by the Banking Commissioner or his representatives or the withholding of information from the banking commissioner or his representatives shall constitute grounds for forfeiture of the charter of such company. Forfeiture of the company's charter may be obtained at the suit of the attorney general upon the request of the banking commissioner.

SECTION 86. Section (a), Article 4, Chapter XI, The Texas Banking Code (Article 342-1104, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) With regard to a trust company, the Banking Commissioner of Texas may take action in accordance with Article 12, Chapter IV, of this code, as if the trust company were a state bank if the banking commissioner finds that an officer, director, or employee of the trust company, or the trust company itself acting through any authorized person:

- (1) violates any law or rule applicable to the trust company;
- (2) refuses to comply with any law or rule applicable to the trust company;
- (3) wilfully neglects to perform his or its duties or commits a breach of trust or of fiduciary duty;
- (4) commits any fraudulent or questionable practice in the conduct of the trust company's business that threatens the trust company's solvency;
- (5) refuses to submit to examination under oath;
- (6) conducts business in an unsafe or unauthorized manner; or
- (7) violates any conditions of the trust company's charter or of any agreement entered with the Banking Commissioner of the Banking Department.

SECTION 87. Section (a), Article 5, Chapter XI, The Texas Banking Code (Article 342-1105, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) With regard to a trust company, the Banking Commissioner of Texas may take action in accordance with Article 1a, Chapter VIII, of this code, as if the trust company were a state bank if:

- (1) it appears to the banking commissioner that the trust company is in a condition that would be an unsafe condition for a state bank under Article 1a and the trust company's condition renders the continuance of its business hazardous to the public or to the shareholders or creditors of the trust company;
- (2) it appears to the banking commissioner considering Article 1a that the trust company has exceeded its powers;
- (3) the trust company had failed to comply with the law; or
- (4) the trust company gives written consent to supervision or conservatorship under this section.

SECTION 88. Section (b), Article 6, Chapter XI, The Texas Banking Code (Article 342-1106, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The ~~[Banking Section of the]~~ Finance Commission shall promulgate and adopt general rules and regulations as may be necessary to accomplish the purposes of this chapter.

SECTION 89. Section (b), Article 8, Chapter XI, The Texas Banking Code (Article 342-1108, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The banking commissioner may require additional capital of a trust company if he determines it necessary to protect the safety and soundness of the trust company.

SECTION 90. Section 1.03, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (25) to read as follows:

(25) "Subsidiary" means a company that is controlled by an association or by a company that is controlled, directly or indirectly, by an

association. For purposes of this subdivision an association is considered to control a company if the association directly or indirectly, or acting in concert with one or more other individuals or entities or through one or more subsidiaries:

(A) owns, controls, or holds with the power to vote, or holds proxies representing, more than 25 percent of the voting shares of the company;

(B) controls in any manner the election of a majority of the directors of the company; or

(C) is a general partner in or has contributed more than 25 percent of the equity capital of the company.

SECTION 91. Section 2.01(a), Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Five or more citizens of this state may apply to incorporate a savings and loan association by submitting to the commissioner, along with the proper filing fee, an application consisting of:

(1) two copies of proposed articles of incorporation setting forth the name of the association, the site of the principal office, and the names and addresses of the initial directors;

(2) two copies of the bylaws under which the association proposes to operate;

(3) statements, exhibits, maps, and other data sufficiently detailed and comprehensive to enable the commissioner to make a determination under Section 2.07 of this Act;

(4) other information relating to the proposed association and its operation required by rules of the commissioner and ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas; and

(5) financial information about the applicants, incorporators, directors, or shareholders that is required as part of the application for charter by rules of ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas.

SECTION 92. Section 2.03, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.03. COMMON STOCK. (a) The commissioner may require before approving an application that a capital stock association have an aggregate amount of capital in the form of stock and paid-in surplus as specified by rules of ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas. Paid-in surplus may be used instead of earnings to pay organization and operating expenses and dividends on savings accounts and to meet any loss reserve requirements. If the application is not approved or if the proposed association does not begin business, the stock subscriptions for capital stock and paid-in surplus shall be returned pro rata to the subscribers, less any lawful expenditures.

(b) After issuance an association may not purchase, directly or indirectly, any of its own shares of common stock. Common stock may not be retired or redeemed until all liabilities of the association have been satisfied in full, including all amounts due to holders of savings accounts, unless the savings accounts are insured by an agency of the United States or prior written permission is obtained from the commissioner, and the ~~retirement~~ ~~[purchase]~~ or redemption is authorized by a majority vote of the association's stockholders at an annual or special meeting called for that purpose. The basis of the ~~retirement~~ ~~[purchase]~~ or redemption must be first approved by the commissioner and, with respect to an association whose accounts are insured, consent must be obtained in writing from the insuring agency and filed with the commissioner. Preferred stock may be retired or redeemed in the manner provided in the articles of incorporation or the resolution of the board of directors of the association establishing the rights and preferences relating to the stock. Both

common and preferred stock must be fully paid for in cash in advance of issuance, and an association may not make a loan against the shares of its outstanding stock.

SECTION 93. Section 2.05, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.05. **EXPENSE FUND REQUIREMENTS FOR PROPOSED MUTUAL ASSOCIATION.** The commissioner may require before approving the articles of incorporation of a mutual association that the association have subscriptions for an aggregate amount of savings accounts and an expense fund in an aggregate amount that the commissioner finds under rules of ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas is necessary for the successful operation of the association. The expense of organizing the association, its operating expenses, and dividends declared and paid or credited to its savings account holders may be paid out of the expense fund until the association's earnings are sufficient to pay those amounts. The amounts contributed to the expense fund do not constitute a liability of the association except as provided by this chapter. The contributions may be repaid pro rata to the contributors from the net earnings of the association after provision for required loss reserve allocations and payment or credit of dividends declared on savings accounts. If an association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unspent after the payment of expenses of liquidation, creditors, and the withdrawal value of savings accounts shall be paid to the contributors pro rata. The books of the association must reflect the expense fund. Contributors to the expense fund shall be paid dividends on the amounts contributed and for this purpose the contributions are considered savings accounts of the association.

SECTION 94. Section 2.13(b), Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The application must include data and information that the commissioner requires or that is required by rules of the commissioner and ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas. The capitalization of the association must be in an amount set by the commissioner sufficient to carry out the purposes for which incorporation is requested.

SECTION 95. Section 2.13, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) Section 10.03(c) of this Act does not apply to an application if the commissioner considers the association to be reorganized or merged to be in an unsafe condition, and the commissioner may approve the reorganization or merger if the commissioner finds from the application and all information submitted with it that the proposed reorganization or merger is in the best interest of the savers, depositors, creditors, and stockholders, if any, of the reorganizing or merged association and the public.

SECTION 96. Section 4.02, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. **POWER TO BORROW.** An association shall have power to borrow an aggregate amount equal to twenty-five per cent (25%) of its savings liability on the date of borrowing from any non-governmental source and may pledge its assets to secure the repayment of money so borrowed. Any borrowing from non-governmental sources in excess of such amount must first be approved in writing by the Commissioner. Notwithstanding the aforesaid limitation, an association which is a member of a Federal Home Loan Bank shall have power to borrow or obtain advances from such bank in such amounts and upon such terms as may be prescribed by such bank from time to time. In addition, an association may, at any time through action of its board of directors, issue such capital notes,

debentures or other capital obligations as shall be authorized under rules and regulations promulgated by the ~~[Building and Loan Section of the]~~ Finance Commission and the Commissioner acting pursuant to the rule-making power delegated by Chapter 198, Acts of the 57th Legislature, Regular Session, 1961, as the same may be amended from time to time.

SECTION 97. Section 5.01, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.01. LENDING AND INVESTMENT POWERS. The commissioner and ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas shall adopt rules relating to the powers of associations operating under this Act to make loans and investments. The rules must contain provisions reasonably necessary to assure that loans made by an association are consistent with sound lending practices and that its investments will promote the purposes of this Act. The rules may include among other things provisions governing:

- (1) the type of loans and the conditions under which an association may originate, make, or sell loans;
- (2) the conditions under which an association may purchase or participate in loans made by other lenders;
- (3) the conditions for the servicing of loans for other lenders;
- (4) the conditions under which an association may lend money on the security of loans made by others;
- (5) the conditions under which an association may pledge loans held by it as collateral for borrowings by the association;
- (6) the conditions under which associations may invest in securities and debt instruments;
- (7) the documentation that an association must have in its loan files at the time of funding or purchase of a loan or the participation in a loan;
- (8) the form and content of statements of expenses and fees and other charges that are paid by borrowers or that borrowers are obligated to pay;
- (9) title information that must be maintained in force;
- (10) insurance coverage of property securing loans that must be provided by borrowers;
- (11) appraisal reports;
- (12) financial statements of borrowers;
- (13) the fees or other compensation that may be paid to an officer, director, employee, affiliated person, consultant, or any third party in connection with the procuring of any loan for an association;
- (14) the conditions under which the association may advance funds to pay taxes, assessments, insurance premiums, and other similar charges for the protection of its interest in property securing its loans;
- (15) the terms and conditions under which an association may acquire and deal in real property;
- (16) the valuation on an association's books of real property held by it;
- (17) the terms and conditions governing the investment by an association in subsidiary corporations and the powers that may be exercised by subsidiaries; and
- (18) other matters considered necessary to properly administer each type of transaction.

SECTION 98. Section 6.15, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.15. WITHDRAWALS FROM SAVINGS ACCOUNTS. Any savings account holder may at any time present a written order for withdrawal of all or any part of his savings account except to the extent the same may be pledged to the

association or to another person on the books of the association. The association may pay in full each and every withdrawal order as presented and may collect early withdrawal penalties provided for by the certificate or contract applicable to the account. The Commissioner with the approval of ~~[the Savings and Loan Section of]~~ the Finance Commission and the Governor of Texas may invoke a uniform limitation on the amounts withdrawable from savings accounts of associations subject to this Act during any period when such limitation is necessary in the public interest.

SECTION 99. Section 7.02, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.02. MINIMUM NET WORTH REQUIREMENT. An association shall meet minimum net worth requirements required by rules of the commissioner and ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas.

SECTION 100. Section 7.03, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.03. EARNINGS ON SAVINGS ACCOUNTS. An association whose bylaws contain the provision authorized by Section 6.19 of this Act may contract to pay interest on savings accounts. Other associations may pay earnings on savings accounts in the form of dividends declared by their board of directors. Earnings in the form of interest or dividends shall be computed and paid according to rules of the commissioner and ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas.

SECTION 101. Section 8.01, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8.01. SUPERVISION AND REGULATION. The Savings and Loan Department of Texas and the commissioner shall regulate associations and subsidiary corporations of associations operating under this Act and shall enforce this Act. The commissioner and ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas may adopt rules relating to:

(1) the minimum amounts of capital stock and paid-in surplus required for incorporation as a capital stock association and the minimum amounts of savings liability and expense funds required to incorporate as a mutual association;

(2) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Savings and Loan Department of Texas pursuant to this Act;

(3) the books and records that an association shall keep and the location at which the books and records shall be maintained;

(4) the accounting principles and practices that an association shall observe;

(5) the conditions under which records may be copied or reproduced for permanent storage before the originals are destroyed;

(6) the form, contents, and time of publication of statements of condition and the form and contents of annual reports or the reports that are to be prepared and published or filed by an association;

(7) the manner by which assets, liabilities, and transactions in general are to be described when entered in the books of an association, so that the entry will be an accurate description of the subject matter of the entry; and

(8) the conditions under which the commissioner may require assets to be charged off or reserves established by transfer from surplus or paid-in capital because of depreciation of or overstatement of value.

SECTION 102. Section 8.04, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8.04. GROUNDS FOR SUPERVISORY INTERVENTION IN AFFAIRS OF AN ASSOCIATION. The commissioner may intervene in the affairs of an association if:

(1) the association or a director, officer, agent, or other person participating in the conduct of the affairs of the association or a subsidiary of the association is engaging in, has engaged in, or is about to engage in an unsafe and unsound practice in conducting the affairs of the association or a violation of a provision of the articles of incorporation or bylaws of the association or any law, rule, supervisory order applicable to the association, or condition that the commissioner or ~~[the Savings and Loan Section of]~~ The Finance Commission of Texas has imposed on the association by written order or agreement; or has filed materially false or misleading information required pursuant to Section 11.20 of this Act;

(2) a director, officer, employee, agent, or other person participating in the conduct of the affairs of the association or a subsidiary or holding company parent, if any, of the association has committed or is about to commit:

(A) a fraudulent or criminal act in the conduct of the association's, subsidiary's, or holding company's affairs that may cause the association or a subsidiary to become insolvent or be in danger of insolvency, or another act that threatens immediate or irreparable harm to the general public or the association, its account holders, or creditors or to the subsidiary;

(B) a breach of fiduciary duty, because of which the association or a subsidiary has suffered or will probably suffer substantial financial losses or other damages or that would seriously prejudice the interest of the holders of savings accounts or other security issued by the association;

(C) a breach of an order or instructions of a conservator or supervisor in charge of the association's affairs;

(D) a refusal to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the affairs of the association; or

(E) a material alteration, concealment, removal, or falsification of books or records of the association or a subsidiary; or

(3) the association is insolvent, is in imminent danger of insolvency, or is engaged in or is about to engage in making loans or investments and the market value of the investments or the value of the security for the loans is materially overstated, or the association has failed to maintain proper books and records from which the true financial condition of the association or the state of its affairs can be determined or has refused to authorize and direct a person having possession of the association's or a subsidiary's books, papers, records, or accounts to permit the commissioner or a duly authorized representative of the commissioner to inspect or examine them.

SECTION 103. Section 8.05(d), Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A temporary or final supervisory order and all notices, correspondence, or other records relating to the order are confidential and may not be revealed to the public, except for good reason by the commissioner, ~~[or] in a hearing or judicial proceeding under Section 8.06 or 8.07 of this Act or to assert a defense under Section 8.08(g) of this Act.~~ However, the commissioner may disclose the information to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

SECTION 104. Section 9.02, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.02. RENEWAL OF OUTSTANDING CERTIFICATES. Any foreign association holding a certificate of authority under Section 9.01(3) or 9.07 may renew such certificate from year to year thereafter by the payment of an annual renewal fee in January of each year in an amount set annually by resolution of ~~[the Savings and Loan Section of]~~ the Finance Commission. Such association shall pay the same examination charges paid by domestic associations under Section 11.05 of this Act, together with all traveling expenses of such examination; provided that if such examination fee is inadequate to defray all expenses of such examination, then such association shall pay the additional cost thereof. Examinations shall not be made more than once each year.

SECTION 105. Section 10.01, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.01. CONVERSION INTO FEDERAL ASSOCIATIONS. The ~~[Savings and Loan Section of the]~~ Finance Commission of Texas shall promulgate rules and regulations establishing the conditions under which an association subject to this Act may convert itself into a Federal association in accordance with the provisions of Section 5 of the Home Owners' Loan Act of 1933, as now or hereafter amended. The purpose of such conditions shall be to assure that the proposed conversion shall not cause undue harm to the public interest or to any other existing association. Such a conversion may be initiated by the adoption, by a majority vote of the members or shareholders of an association entitled to vote at any annual or special meeting called to consider such conversion, of a resolution declaring that the association shall be so converted. A copy of the minutes of the proceedings of such meeting of the shareholders or members, verified by affidavit of the secretary or an assistant secretary shall be filed in the office of the Commissioner within ten (10) days after the date of such meeting. A sworn copy of the proceedings of such meeting, when so filed, shall be presumptive evidence of the holding and action of such meeting. Within ten (10) days after receipt of an application to convert, which shall include a copy of such minutes, the Commissioner shall either consent to such conversion in writing or call a hearing to consider whether such proposed conversion complies with the conditions established by ~~[the Savings and Loan Section of]~~ the Finance Commission of Texas. Such hearing shall be held within twenty-five (25) days after the filing of the conversion application unless a later date is agreed to by the association and the Commissioner. Such a hearing shall be conducted by the Commissioner, or a hearing officer designated by the Commissioner, as a contested case in compliance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) except that no proposal for decision shall be made and a final decision or order must be rendered by the Commissioner within fifteen (15) days after the close of the hearing. The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) with respect to motion for rehearing and judicial review, shall be available to the association in the event the Commissioner should refuse to approve the conversion sought. If the Commissioner consents to such conversion the association, within three (3) months after the date of the Commissioner's consent, shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a Federal association. There shall be filed with the Commissioner a copy of the charter issued to such Federal association by the Federal Home Loan Bank Board or a certificate showing the organization of such association as a Federal association, certified by the secretary or assistant secretary of the Federal Home Loan Bank Board. No failure to file any such Federal instruments with the Commissioner shall affect the validity of such conversion. Upon the grant of any association of a charter by the Federal Home Loan Bank Board, the association receiving such charter shall cease to be an association incorporated under this Act and shall no longer be subject to

the supervision and control of the Commissioner. Upon the conversion of any association into a Federal association, the corporate existence of such association shall not terminate, but such Federal association shall be deemed to be a continuation of the entity of the association so converted and all property of the converted association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by operation of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue and be the property of such Federal association into which the state association has converted itself, and such Federal association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting association, and such Federal association as of the time of the taking effect of such conversion shall continue to have and succeed to all the rights, obligations, and relations of the converting association. All pending actions and other judicial proceedings to which the converting state association is a party shall not be deemed to have abated or to have discontinued by reason of such conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion into Federal association had not been made and such Federal association resulting from such conversion may continue such action in its corporate name as a Federal association, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting state association theretofore involved in such judicial proceedings. Any association or corporation, which has heretofore converted itself into a Federal association under the provisions of the Home Owners' Loan Act of 1933 and has received a charter from the Federal Home Loan Bank Board, shall hereafter be recognized as a Federal association, and its Federal charter shall be given full credence by the courts of this State to the same extent as if such conversion had taken place under the provisions of this Section; provided, however, that there shall have been compliance with the foregoing requirements with respect to the filing with the Commissioner of a copy of the Federal charter or a certificate showing the organization of such association as a Federal association. All such conversions are hereby ratified and confirmed, and all the obligations of such an association which has so converted shall continue as valid and subsisting obligations of such Federal association, and the title to all of the property of such an association shall be deemed to have continued and vested, as of the date of issuance of such Federal charter, in such Federal association as fully and completely as if such conversion had taken place since the enactment of this Act pursuant to this Section.

SECTION 106. Section 10.03(b), Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Upon being presented with a plan of reorganization, merger, or consolidation, the Commissioner shall give public notice of the proposed reorganization, merger, or consolidation in the county or counties in which the associations participating in the proposed plan have offices and give any interested party an opportunity to appear, present evidence, and be heard for or against the proposed plan. The hearing shall be held before a hearing officer designated by the Commissioner. If a protest is not received on or before the date of hearing, the hearing may be dispensed with by the Commissioner or hearing officer. The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applicable to a contested case apply to the hearing, except that the notice and hearing provisions of that Act and of this section do not apply to an application under this section if the Commissioner has designated the merger to be a supervisory merger, under rules adopted by [the

~~Savings and Loan Section of~~ the Finance Commission, and in that event, the application and all information relating to the application is confidential and privileged from public disclosure.

SECTION 107. Section 11.05, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.05. FEES. The amount of the fees to be charged by the Commissioner for supervision and examination of associations, filing of applications and other documents and for other services performed by the Commissioner and his office and the time and manner of payment thereof shall be fixed by rule and regulation adopted by the Commissioner and ~~[the Savings and Loan Section of]~~ the Finance Commission, acting pursuant to the rule-making power delegated by Article 5, Chapter II, the Texas Banking Code of 1943 (Article 342-205, Vernon's Texas Civil Statutes). All fees collected by the Commissioner shall be deposited and used in accordance with Section (h), Article 5, Chapter II, The Texas Banking Code of 1943 (Article 342-205, Vernon's Texas Civil Statutes).

SECTION 108. Section 11.18, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.18. DISCLOSURE—PENALTY. The Commissioner and any examiner, supervisor, conservator, liquidator, inspector, deputy, assistant or clerk, or other employee of the Savings and Loan Department of Texas, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the person requires, or who wilfully makes a false official report as to the condition of such association, shall be removed from office or further employment with the department. Reports of examinations made to the Commissioner shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commissioner, but copies thereof may be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act. Nothing herein shall prevent the proper exchange of information relating to associations and the business thereof with the representatives of savings and loan departments of other states or to any other department, agency, or instrumentality of this or another state or the United States if the Commissioner determines the disclosure to be necessary or proper for the enforcement of the laws of this state, another state, or the United States. Any official violating any provision of this Section shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. Unless otherwise provided by this Act, the foregoing provisions shall not apply to any facts or information or to any reports of investigations obtained or made by the Commissioner or his staff in connection with any applications for a charter under this Act or in connection with any hearing held by the Commissioner under this Act, and any such facts, information or reports may be included in the record of the appropriate hearing. Notwithstanding the foregoing, the Commissioner shall report promptly to ~~[the Savings and Loan Section of]~~ the Finance Commission when a supervisory order has been issued under Chapter 8 of this Act. The Commissioner shall furnish such information about the association or the person as the Commission ~~[section]~~ members shall require in executive session and all information discussed in the executive session is confidential.

SECTION 109. Sections 11.20(b), (d), and (l), Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The application must be on a form prescribed by the commissioner and must be made under oath. The application must, except to the extent expressly waived by the commissioner, contain the following information:

(1) the identity, personal history, business background and experience, and financial condition of each person by whom or on whose behalf the

acquisition is to be made, including a description of the managerial resources and future prospects of each acquiring party and a description of any material pending legal or administrative proceedings in which he is a party;

(2) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(3) the identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and arrangements, agreements, or understandings with those persons;

(4) any plans or proposals which any acquiring party making the acquisition may have to liquidate the association, to sell its assets or merge it with any company, or to make any other major changes in its business or corporate structure or management;

(5) the terms and conditions of any offer, invitation, agreement, or arrangement under which any voting security will be acquired and any contract affecting that security or its financing after it is acquired; ~~and~~

(6) information establishing that the requirements under Subsection (d) of this section are satisfied; and

(7) other information that the commissioner by rule requires to be furnished in an application as well as any information that the commissioner orders to be included in the particular application being filed.

(d) The commissioner, subject to Subsections (n) and (o) of this section, shall issue an order denying an application unless the commissioner determines that the applicant has established [if he finds] that:

(1) the acquisition would not:

(A) substantially lessen competition;

(B) [or would] in any manner be in restraint of trade that [and] would result in a monopoly; and

(C) [or would] be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state; unless he also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not in violation of any law of this state or the United States];

(2) the [poor] financial condition of any acquiring party would not [might] jeopardize the financial stability of the association being acquired;

(3) plans or proposals to liquidate or sell the association or its assets, if any, are [not] in the best interest of the association;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would [not] be in the best interest of the association; or

(5) the association would [will not] be solvent, have adequate capital structure, and [or] be in compliance with the laws of this state after the acquisition[;

[6] the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner; or

[7] the applicant is not acting in good faith].

(l) The Finance Commission of Texas [Savings and Loan Section] by rule shall adopt a schedule of fees for the filing of applications and the holding of hearings. The schedule may be graduated so that those applications and hearings that are more difficult to review or administer will require a larger fee. An application fee is not refundable on denial of the application, but the commissioner may refund

a portion of the fee if the application is withdrawn before he completes review of it. Fees collected under this section shall be deposited and used in accordance with Section (h), Article 5, Chapter II, The Texas Banking Code of 1943 (Article 342-205, Vernon's Texas Civil Statutes).

SECTION 110. Section 11.20, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended by adding Subsections (n) and (o) to read as follows:

(n) Notwithstanding Subsection (d)(1) of this section, the commissioner is not required to deny an application if the commissioner determines that:

(1) the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(2) the proposed acquisition is not in violation of any law of this state or the United States.

(o) The commissioner shall issue an order denying an application if the commissioner determines that the applicant:

(1) has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner; or

(2) is not acting in good faith.

SECTION 111. Sections 11.14 and 11.17, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), are repealed.

SECTION 112. Section 6(a), Texas Savings and Loan Supplemental Fund Act (Article 852b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) All corporate powers of the corporation shall be exercised by a board of directors, and the board shall manage the business and affairs of the corporation. The board of directors shall consist of the members of ~~the Savings and Loan Section of~~ The Finance Commission of Texas and six members elected by the member associations voting at an annual meeting.

SECTION 113. Article 3921, Revised Statutes, is amended to read as follows:

Art. 3921. BANKING COMMISSIONER. The Banking Commissioner shall charge and receive the following fees:

For each application for charter for a state bank or bank and trust company, a fee applicable alike to all such applications which shall be prescribed and may be periodically adjusted by ~~the Banking Section of~~ the Finance Commission of Texas, shall be paid when the application is filed. For each amendment or supplement to a state bank or bank and trust company charter, a fee of One Hundred and Fifty Dollars (\$150) shall be paid when said amendment or supplement is filed, and if the amendment results in an increase in authorized capital stock of the corporation in excess of Ten Thousand Dollars (\$10,000) it shall be required to pay additional fee of Ten Dollars (\$10) for each additional Ten Thousand Dollars (\$10,000) or fractional part thereof of the capital increase, after the first, provided such fee shall not exceed Twenty-Five Hundred Dollars (\$2,500).

SECTION 114. Article 2.02, Title 79, Revised Statutes (Article 5069-2.02, Vernon's Texas Civil Statutes), is amended by adding Section (7) to read as follows:

(7) The commissioner is entitled to a salary in an amount determined by the Finance Commission.

SECTION 115. Section (1), Article 2.02B, Title 79, Revised Statutes (Article 5069-2.02B, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) All money collected under this Act shall be deposited in the Office of the Consumer Credit Commissioner expense fund, which is created as a special fund in the State Treasury. Money in the fund may be used only for the administration of this Act and support of the Finance Commission of Texas as provided by Article 11C, Chapter I, The Texas Banking Code (Article 342-111C, Vernon's Texas Civil Statutes). Income earned on money deposited in the expense fund shall be credited to that fund.

SECTION 116. Section (7), Article 2.03, Title 79, Revised Statutes (Article 5069-2.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) Whenever the Consumer Credit Commissioner has reasonable cause to believe that any person is violating any provisions of Subtitles Two and Three of this Title he may in addition to all actions provided for, and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation. A person may appeal such an order to ~~[the Consumer Credit Section of]~~ the Finance Commission. The appeal must be made in accordance with rules adopted by the Finance Commission ~~[Consumer Credit Section]~~ for that purpose. In addition to the order, the Commissioner may bring an action in any district court of this State having jurisdiction and venue, on the relation of the Attorney General at the request of the Commissioner, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of Subtitles Two and Three of this Title through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as he would have under Articles 2293 through 2319, inclusive, Revised Civil Statutes of Texas, 1925, as amended, if he had been appointed pursuant to paragraph four of Article 2293.

SECTION 117. Chapter 32, Penal Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. SAVINGS AND LOAN ASSOCIATIONS

Sec. 32.71. **EMBEZZLEMENT; UNAUTHORIZED ISSUANCE; FALSE ENTRY.** (a) An officer, director, member of any committee, clerk or agent of any savings and loan association in this state commits an offense if the person embezzles, abstracts, or misapplies money, funds, or credits of the association, issues or puts into circulation any warrant or other order without proper authority, issues, assigns, transfers, cancels, or delivers up any note, bond, draft, mortgage, judgment, decree, or other written instrument belonging to the association, certifies to or makes a false entry in any book, report, or statement of or to the association, with intent to deceive, injure, or defraud the association, or a member of the association, for the purpose of inducing any person to become a member of the association, or to deceive anyone appointed to examine the affairs of the association.

(b) A person commits an offense if the person, with intent to deceive, injure, or defraud, aids or abets any officer, member of any committee, or other person in committing any of the acts prohibited under Subsection (a).

(c) An offense under this section is a felony punishable by imprisonment for not less than one year or more than 10 years.

Sec. 32.72. **FALSE INFORMATION; SUPPRESSING EVIDENCE.** (a) Any person commits an offense if the person for the purpose of influencing the actions of an association or its employees, agents, or representatives or for the purpose of influencing the actions of The Finance Commission of Texas, the savings and loan commissioner, or employees, agents, or representatives of the Savings and Loan Department of Texas, knowingly:

(1) removes, mutilates, destroys, or conceals a paper, book, or record of a savings and loan association or of the savings and loan commissioner or the Savings and Loan Department of Texas for the purpose of concealing a fact or suppressing evidence;

(2) makes, passes, alters, or publishes a false, counterfeit, or forged instrument, paper, document, statement, or report to a savings and loan association or to the savings and loan commissioner or the Savings and Loan Department of Texas; or

(3) substantially overvalues land, property, security, an asset, or income in connection with a transaction with a savings and loan association without substantiation, justification, or supporting documentation generally accepted by appraisal standards.

(b) An offense under this section is a felony punishable by a fine of not more than \$100,000, imprisonment for not more than 10 years, or both.

SECTION 118. The Finance Commission of Texas shall make a thorough and intensive study of the operations and procedures of the banking department, savings and loan department, and office of the consumer credit commissioner to determine the possible advantages and disadvantages of consolidating those agencies into a single department. The finance commission shall submit a report of its findings and recommendations resulting from the study to the legislature before January 1, 1991.

SECTION 119. The terms of all members of the Finance Commission of Texas serving on the effective date of this Act expire January 1, 1990. Before January 1, 1990, the governor shall appoint nine members of the finance commission to take office January 1, 1990. The governor shall appoint three members to terms expiring February 1, 1992, three to terms expiring February 1, 1994, and three to terms expiring February 1, 1996.

SECTION 120. (a) The banking section, the savings and loan section, and the consumer credit section of The Finance Commission of Texas are abolished. All powers, duties, rights, and obligations of those sections are transferred to the finance commission. Rules of those sections continue in effect as rules of the finance commission until amended or repealed by the finance commission.

(b) Any reference in a law to the banking section, the savings and loan section, or the consumer credit section of The Finance Commission of Texas means the finance commission.

SECTION 121. This Act takes effect September 1, 1989.

SECTION 122. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment - A. Moreno

Amend C.S.S.B. 607 as follows:

(1) Add a new Section 103 of the bill to read as follows:

SECTION 103. Chapter 8, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended by adding Section 8.13 to read as follows:

Sec. 8.13. RECEIVERSHIP OF UNINSURED ASSOCIATIONS. (a) After a final order of liquidation has been issued under Section 8.09 or 8.12 of this chapter for an association to deposits of which are not insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, or any other state or federal agency, the commissioner or the liquidating agent may apply to a district court of Travis County for the appointment of a receiver for the association in liquidation. The court shall appoint a receiver if it finds substantial evidence that:

(1) the commissioner has met all applicable requirements of Section 8.09 or 8.12 of this chapter for issuing the order of liquidation;

(2) service of the order of liquidation has been accomplished as provided by Section 8.06 of this chapter; and

(3) the order is a final unappealable order under Section 8.09 or 8.12 of this chapter.

(b) The court shall appoint the liquidating agent appointed during the liquidation of the association to serve as transitional receiver during the first 60 days of the receivership. The court may appoint a different receiver for the remainder of the receivership.

(c) After appointment of a receiver under this section, liquidation of the association under the supervision of the commissioner shall stop and the receiver shall carry out the liquidation under the supervision of the court. A receiver under this section is governed by Sections 8.09 and 8.12 of this chapter to the extent not inconsistent with this section with the actions of the receiver being supervised by the court rather than by the commissioner and by state law applicable to receiverships generally to the extent not inconsistent with this chapter. On appointment, the receiver shall immediately take charge of the affairs of the association, subject to the direction of the court, and shall conduct the business of the association or act as necessary to conserve the assets and protect the rights of the depositors and creditors of the association and its shareholders or members.

(d) The receiver is entitled to compensation as determined by the court.

(e) On appointment of a receiver under this section, the commissioner and the liquidating agent are released and discharged from further duty or obligation in connection with the administration, regulation, or supervision of the affairs of the association, and neither the commissioner nor the liquidating agent have further liability, individually or in their official capacities, for an action or a failure to act during the time the association was in liquidation under this chapter.

(f) The appointment of or the action of a receiver under this section does not invalidate an authorized action previously taken by the liquidating agent under Section 8.09 of this chapter and that action is considered authorized and valid as if the action had been approved by the court in the receivership proceedings.

(g) A book, record, document, or paper of the association received by the receiver and held by the receiver in the course of the receivership proceeding or a certified copy of such an item under the hand and official seal of the receiver shall be received in evidence in a case properly brought by or against the receiver, as receiver, without proof except the certificate of the receiver that the item was received from the custody of the association or found among its effects.

(h) In a case properly brought by or against the receiver, as receiver, the receiver may certify to the correctness of a paper, document, or record of the receiver's office, including an item described by Subsection (g) of this section, and may make a certificate under seal of the receiver and certified by the receiver certifying to a fact contained in the paper, document, or record in evidence in a case in which the original would be evidence. The original book, record, document, or paper or a certified copy or part of such an item when received in evidence is prima facie evidence of the facts disclosed in the item.

(i) Subsections (g) and (h) of this section apply to each case properly brought by or against the liquidating agent as liquidating agent before appointment of a receiver, as if the actions had been brought by the receiver.

(j) The property and assets of the association are in the custody of the court as of the date of the beginning of the receivership. The receiver and the receiver's successors in office are vested with the title to all of the property, contracts, and rights of action of the association, wherever located, as of the date of entry of the order directing possession to be taken. The title of the receiver relates back to the date of the beginning of the liquidation of the association unless the court provides otherwise. The filing or recording of the order in a record office of the state has the

same effect as notice as a duly filed or recorded deed, bill of sale, or other evidence of title.

(k) The court may require a bond from the receiver if the court considers it desirable for the protection of the assets of the association in an amount fixed by the court. The cost of the bond shall be paid from the assets of the association.

(2) Renumber sections appropriately.

Floor Amendment No. 1 on Third Reading - A. Smith

Amend C.S.S.B. 607 on third reading as follows:

- (1) On page 20, strike the sentence that begins on line 12.
- (2) On page 27, strike the sentence that begins on line 16.

Floor Amendment No. 2 on Third Reading - A. Smith

Amend C.S.S.B. 607 on third reading on page 8, line 11 by inserting after the word "officer" and before the bracket the following language: "in a state association".

Floor Amendment No. 3 on Third Reading - Connelly

Amend C.S.S.B. 607 on page 146, between lines 15 and 16, by adding Subsection (c) to Section 120 to read as follows:

(c) This Act does not limit the power of the consumer credit commissioner to regulate under the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes) including the exclusive power to adopt rules relating to hours of operation and location of pawnshops, identification required of pledgors and sellers of property, and all other matters pertaining to the operation of pawnshops.

Floor Amendment No. 4 on Third Reading - A. Smith

Amend C.S.S.B. 607 by striking SECTION 114 of the bill and substituting a new SECTION 114, to read as follows:

SECTION 114. Article 2.02, Title 79, Revised Statutes (Article 5069-2.02, Vernon's Texas Civil Statutes), is amended by adding Section (7) to read as follows:

(7) The salary of an employee of the Office of Consumer Credit Commissioner in any other exempt position may not exceed the amount that is \$2,000 less than the salary of the Commissioner. The Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes) applies to a position of the Office of Consumer Credit Commissioner only if it is classified in groups 1-10 under the position classification plan in effect on January 1, 1989, or comparable positions under any successor plan. The legislature in the General Appropriations Act may determine the total amount appropriated to the Office of Consumer Credit Commissioner but may not determine the number or salaries of employees of the Office of Consumer Credit Commissioner in exempt positions. The Finance Commission, subject to the limits provided by this article, shall determine the number of employees of the Office of Consumer Credit Commissioner in exempt positions and the salaries of those employees. The Office of Consumer Credit Commissioner may use funds appropriated to it for any purpose to pay the salaries determined by the Finance Commission unless the General Appropriations Act expressly limits the use of particular funds for a particular purpose.

The amendments were read.

On motion of Senator Harris and by unanimous consent, the Senate concurred in the House amendments to S.B. 607 viva voce vote.

RECORD OF VOTE

Senator Green asked to be recorded as voting "Nay" on the motion to concur in the House amendments to the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2211 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2211, Relating to the compensation of certain prosecutors; making an appropriation.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2211 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2211** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 3183 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3183, Relating to the regulation of naturally occurring radioactive materials related to the production of or exploration for oil and gas; making an appropriation.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Amend **H.B. 3183** by striking everything below the enacting clause and inserting in lieu thereof the following:

SECTION 1. Section 91.101, Natural Resources Code (effective until delegation of RCRA authority to the Railroad Commission of Texas), is amended by adding Subsection (c) to read as follows:

(c) In considering under this section any permit application or exemption concerning NORM, the commission shall protect occupational and public health and safety and the environment. The commission has exclusive authority to adopt and enforce rules, set standards, and collect fees for the regulation of NORM.

The commission by rule shall define for purposes of this chapter the term "NORM". Upon proposal of any rules, standards, or procedures by the commission under this section, the commission shall send copies to the Texas Department of Health, the Texas Water Commission, and any other agencies or persons the commission may designate. Any agency or person to whom such rules are sent may submit comments and recommendations to the commission and shall be given a reasonable time to do so. The commission may prescribe what time period is reasonable for response. Any memorandum of understanding entered into between the commission and any other state agency pursuant to this section shall be adopted as a rule by each of the agencies involved. The standards set by the commission

under this section shall, to the fullest extent practicable, not be inconsistent with those adopted by the Texas Department of Health for occupational health and radiation control and shall ensure exposures to radiation are maintained as low as reasonably achievable.

SECTION 2. Section 91.101, Natural Resources Code (effective on delegation of RCRA authority to the Railroad Commission of Texas), is amended as follows:

Sec. 91.101. RULES AND ORDERS. (a) To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this section.

(b) In considering under this section any permit application or exemption concerning NORM, the commission shall protect occupational and public health and safety and the environment. The commission has exclusive authority to adopt and enforce rules, set standards, and collect fees for the regulation of NORM. The commission by rule shall define for purposes of this chapter the term "NORM". Upon proposal of any rules, standards, or procedures by the commission under this section, the commission shall send copies to the Texas Department of Health, the Texas Water Commission, and any other agencies or persons the commission may designate. Any agency or person to whom such rules are sent may submit comments and recommendations to the commission and shall be given a reasonable time to do so. The commission may prescribe what time period is reasonable for response. Any memorandum of understanding entered into between the commission and any other state agency pursuant to this section shall be adopted as a rule by each of the agencies involved. The standards set by the commission under this section shall, to the fullest extent practicable, not be inconsistent with those adopted by the Texas Department of Health for occupational health and radiation control and shall ensure exposures to radiation are maintained as low as reasonably achievable.

SECTION 3. Section 91.1011(b), Natural Resources Code (effective until delegation of RCRA authority to the Railroad Commission of Texas), is amended to read as follows:

(b) "Oil and gas waste" as defined in Subsection (a) of this section includes salt water, brine, sludge, drilling mud, [and] other liquid, semiliquid, or solid waste material, and any naturally occurring radioactive materials produced as a result of the production of or exploration for oil and gas, but does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

SECTION 4. Section 91.1011(b), Natural Resources Code (effective on delegation of RCRA authority to the Railroad Commission of Texas), is amended to read as follows:

(b) "Oil and gas waste" as defined in Subsection (a) of this section includes salt water, brine, sludge, drilling mud, [and] other liquid, semiliquid, or solid waste material, and any naturally occurring radioactive materials produced as a result of the production of or exploration for oil and gas.

SECTION 5. Chapter 91, Natural Resources Code, is amended by adding Section 91.1014 to read as follows:

Sec. 91.1014. NORM PERMIT REQUIRED; FEES. (a) In this Chapter, "NORM" means naturally occurring radioactive materials produced as a result of the production of or exploration for oil and gas.

(b) Except as authorized by a rule, order or permit issued by the commission or the Texas Department of Health, pursuant to their respective jurisdictions, a person may not use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of NORM during the biennium ending August 31, 1991. Nothing in this Chapter shall be construed to include within the commission's jurisdiction the licensing of off-site storage, processing, or disposal facilities for NORM.

(c) The commission by rule may set and may collect a fee for each NORM permit issued by the commission under Section 91.101 of this code during the biennium ending August 31, 1991.

(d) The amount of the fee shall be an amount designed to recover the actual expenses incurred by the commission during the biennium ending August 31, 1991 for:

- (1) processing applications for NORM permits;
- (2) amending or renewing NORM permits;
- (3) inspecting NORM permittees; and

(4) enforcing this chapter and rules adopted or orders issued under this chapter as applied to NORM permittees.

(e) The commission shall compare amounts collected from fees imposed under this section in each fiscal year with actual expenses incurred in the same period and by rule shall adjust the fees as needed to comply with the standard provided by Subsection (d) of this section.

SECTION 6. (a) Subchapter A, Chapter 401, Health and Safety Code, is amended by adding Section 401.004 to read as follows:

Sec. 401.004. APPLICABILITY. This chapter does not apply to naturally occurring radioactive materials produced as a result of the production of or exploration for oil and gas, that are regulated under Subchapter D, Chapter 91, Natural Resources Code.

(b) This section takes effect only if H.B. No. 2136, 71st Legislature, Regular Session, 1989, is enacted and becomes law. If that bill does not become law, this section has no effect.

SECTION 7. (a) Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. APPLICABILITY. This Act does not apply to naturally occurring radioactive materials produced as a result of the production of or exploration for oil and gas, that are regulated under Subchapter D, Chapter 91, Natural Resources Code.

(b) This section takes effect only if H.B. No. 2136, 71st Legislature, Regular Session, 1989, is not enacted or does not become law. If that bill becomes law, this section has no effect.

SECTION 8. Fees collected under Section 91.1014, Natural Resources Code, as added by this Act, during the biennium ending August 31, 1991, are appropriated to the Railroad Commission of Texas for that period for the purposes provided by that section.

SECTION 9. This Act does not apply to any application filed with the Texas Department of Health on or before the effective date of this Act.

SECTION 10. If a program concerning naturally occurring radioactive material regulated under Subchapter D, Chapter 91, Natural Resources Code, is adopted by the federal government, then the commission shall take those steps and enter into those agreements with other state agencies that are necessary to allow delegation of the federal program to the State of Texas.

SECTION 11. This Act takes effect September 1, 1989. All provisions of this Act and any licenses, permits, orders or rules issued under the authority of this Act shall expire August 31, 1991.

SECTION 12. The expiration of this Act does not apply to a violation occurring under this Act or any permit, order or rule issued thereunder before the effective date of the expiration. A violation occurring before that date is covered by this Act as it existed on the date on which the violation occurred and the former law is continued in effect for this purpose.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 3183 ON THIRD READING

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.B. 3183 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 884 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 884, Relating to textbooks and to the continuation, membership, operation, and administration of the State Textbook Committee.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 884 ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 884** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

STATEMENT OF LEGISLATIVE INTENT ON HOUSE BILL 884

As a member of the Texas Senate I served on the Sunset Commission and on the Senate Education Committee. As such I heard and participated in most, if not all, the discussions on **H.B. 884**, especially as it relates to Section 11 which deals with the direct shipment of textbooks.

As the Senate sponsor of **H.B. 884**, I wish to make the following statement in order to more fully establish legislative intent regarding this section:

The clear mandate of the Legislature in requiring the Texas Education Agency to develop rules and conduct a direct shipment program was for the Agency to allow a comprehensive direct shipment program by qualified publishers over the next two years and for the Agency to accurately develop data which would enable the next Legislature to accurately determine its benefits in order that a more permanent program may be implemented. To this end, the Legislature intended that the Agency begin formulating reasonable guidelines immediately so that a direct shipment program may begin on the effective date of this Act and that the Agency develop as much data as possible to allow the Legislature to accurately evaluate the relative benefits of direct textbook shipments.

GREEN

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Johnson and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to House amendments to **S.B. 75**.

SENATE BILL 75 WITH HOUSE AMENDMENTS

Senator Johnson called **S.B. 75** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Oakley

Amend **S.B. 75** by deleting SECTION 1.09 and renumbering SECTION 1.10 as SECTION 1.09.

Floor Amendment No. 1 - Shine

Amend S.B. 75 as follows:

On page 25, line 25 add the following after the period:

“However, this Act shall not take effect unless and until the United States Department of Housing and Urban Development certifies this Act as substantially equivalent to Title VIII of the Civil Rights Act of 1968, as amended.”

Floor Amendment No. 2 - Shine

Amend S.B. 75 as follows:

On page 10 add a new Section 3.05 as follows:

“SECTION 3.05. HANDICAP. (a) A person may not discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

- (1) that buyer or renter;
- (2) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
- (3) any person associated with that buyer or renter.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

- (1) that person; or
- (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) any person associated with that person.

(c) For purposes of this section only, discrimination includes:

(1) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;

(2) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(3) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the federal Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that:

(A) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(B) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(C) all premises within such dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in bathroom walls to allow later installation of grab bars; and

(iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as 'ANSI A117.1') suffices to satisfy the requirements of paragraph (c)(3)(C).

(e) As used in this subsection, the term 'covered multifamily dwellings' means:

(1) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(2) ground floor units in other buildings consisting of 4 or more units.

(f) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." and renumber Sections 3.05 and 3.06 as Sections 3.06 and 3.07, respectively. Also, delete the word "handicap" from Section 3.01.

Floor Amendment No. 3 - Waterfield

Amend S.B. 75 as follows:

(1) Insert a new section to be appropriately numbered and to read as follows:

SECTION ____ The statutory civil remedies or theories of recovery created by a statute continued in effect under this Act or created by a statute added or amended by this Act may not be expanded beyond their express statutory terms.

(2) Renumber the subsequent sections appropriately.

Floor Amendment No. 4 - Fraser

Amend S.B. 75 as follows:

(1) On page 2 strike lines 18-23 and substitute the following:

(9) "Handicap" means a mental or physical impairment that substantially limits at least one major life activity, or a record of such an impairment. The term does not include current illegal use of, or addiction to, any drug or illegal or federally controlled substance."

Floor Amendment No. 5 - Waterfield

Amend S.B. 75 on page 2, line 23, after the period, by inserting "In this Act, a reference to "an individual with a handicap" or to "handicap" does not apply to an individual because of that individual's sexual orientation or because that individual is a transvestite."

Floor Amendment No. 6 - Shine

Amend S.B. 75, page 2, line 20 (Section 1.02 (9)) after the words "an impairment," insert the following:

or being regarded as having such an impairment.

The amendments were read.

On motion of Senator Johnson and by unanimous consent, the Senate concurred in the House amendments to S.B. 75 viva voce vote.

CONFERENCE COMMITTEE REPORT SENATE BILL 55

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 25, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 55 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN
McFARLAND
WASHINGTON
BIVINS
SANTIESTEBAN

On the part of the Senate

A. SMITH
CRADDICK
EVANS
PARKER

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the admissibility in a criminal proceeding of an oral or sign language statement made by the accused as a result of custodial interrogation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 3, Article 38.22, Code of Criminal Procedure, is amended to read as follows:

(a) No oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement;

(2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and [;] has not been altered[; and reflects that the accused was advised before the interrogation that the interrogation will be recorded]; [and]

(4) all voices on the recording are identified; and

(5) not later than the 20th day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made under this article.

SECTION 2. Section 3, Article 38.22, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) The courts of this state shall strictly construe Subsection (a) of this section and may not interpret Subsection (a) as making admissible a statement unless all requirements of the subsection have been satisfied by the state, except that:

(1) only voices that are material are identified; and

(2) the accused was given the warning in Subsection (a) of Section 2 above or its fully effective equivalent.

SECTION 3. The change in the law made by this Act applies only to the admissibility of a statement made on or after the effective date of this Act. The admissibility of a statement made before the effective date of this Act is covered by the law in effect when the statement was made, and the former law is continued in effect for this purpose.

SECTION 4. This Act takes effect September 1, 1989.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3108 ON SECOND READING**

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3108, Relating to the authority of the commissioners courts of certain counties and the governing bodies of certain municipalities to finance the construction and operation of an international toll bridge and similar improvements by issuing combination tax and revenue bonds and levying an annual ad valorem tax.

The bill was read second time.

Senator Uribe offered the following floor substitute for the bill:

**A BILL TO BE ENTITLED
AN ACT**

relating to the authority of the commissioners courts of certain counties to finance the construction and operation of an international toll bridge and similar improvements by issuing combination tax and revenue bonds and levying an annual ad valorem tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 403, Acts of the 54th Legislature, Regular Session, 1955 (Article 6795c, Vernon's Texas Civil Statutes), is amended by adding Section 20A to read as follows:

Sec. 20A. (a) Notwithstanding any other provision of this Act, a county that may issue bonds under Section 7 of this Act may issue combination tax and revenue bonds to construct all or part of an international toll bridge or other improvements spanning the Rio Grande and levy an annual ad valorem tax to repay at least a part of the bonds if the issuance and the levy are approved by a majority of qualified voters of the county voting at an election called and held for that purpose.

(b) The commissioners court of a county on its own motion may at a regular session of the court, or shall, at the regular session of the court following the receipt by the court of a petition signed by the number of qualified voters of the county equal to one percent or more of the total votes cast in the preceding general election for governor call the election. The election order and notice of election must state the purpose for which the bonds are to be issued, the amount of the bonds, the rate of interest, and the fact that unlimited ad valorem taxes are to be levied annually on all taxable property in the county in amounts sufficient, with the revenues from the county toll bridge or county toll bridge system, to pay the bonds at maturity.

(c) The bonds must be made payable from the revenues of the county toll bridge or county toll bridge system and from ad valorem taxes levied and collected from time to time by the county in accordance with Article III, Section 52, of the Texas Constitution, and in amounts necessary, with the revenues from the county toll bridge or county toll bridge system sufficient to retire the bonds. The bonds must be issued in accordance with the applicable provisions of the Bond Procedures Act

of 1981 (Article 717k-6, Vernon's Texas Civil Statutes) and Article 3, Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes), that do not conflict with this section.

(d) The county, in accordance with any applicable requirements of Chapter 262, Local Government Code, may execute an agreement, contract, or trust with a private entity or with Mexico or a political subdivision, department, or agency of Mexico to finance, construct, operate, or maintain an international toll bridge in its entirety or other improvements spanning the Rio Grande.

(e) An agreement, contract, or trust executed before the effective date of this section by a county with a private entity, Mexico, or a political subdivision, department, or agency of Mexico to finance, construct, operate, or maintain an international toll bridge is validated as of the date the agreement, contract, or trust was executed. This subsection does not apply to any matter that on the effective date of this section:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The substitute was read and was adopted viva voce vote.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3108 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 3108 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Carriker in Chair)

HOUSE BILL 2645 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2645, Relating to the sunset review and functions of the Office of Southern Regional Education Compact Commission for Texas.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2645 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2645** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 9 ON THIRD READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

H.B. 9, Relating to the offenses of aggravated assault and deadly assault on a peace officer, member or employee of the Board of Pardons and Paroles, jailer or guard, or probation officer or employee of an adult probation department.

The bill was read third time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 9** on page 1, Section 2, (a) (2), by striking lines 38 and 39 and inserting the following:

(2) threatens with a deadly weapon or threatens to cause bodily injury or causes bodily injury to a member or employee of

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Tejeda and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed viva voce vote.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1525 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **S.B. 1525**. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 25, 1989.)

On motion of Senator Ratliff, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT SENATE BILL 224

Senator Krier submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 224** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

KRIER
GLASGOW
BIVINS
SIMS
RATLIFF

On the part of the Senate

D. HUDSON
HOLLOWELL
RUSSELL
McWILLIAMS
A. SMITH

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to written material that state law requires to be set out in boldface or boldfaced print.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 18.07, Business & Commerce Code, is amended to read as follows:

(a) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include:

(1) a ~~[conspicuous]~~ statement in ~~[boldfaced]~~ type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or estimated length of time for performing the services; and

(4) the address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service of process.

SECTION 2. Section 35.53, Business & Commerce Code, is amended to read as follows:

Sec. 35.53. NOTICE OF LAW APPLICABLE TO CONTRACT. (a) This section applies to a contract only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of \$50,000 or less; and

(2) any element of the execution of the contract occurred in this state and a party to the contract is:

~~(A)~~~~(1)~~ an individual resident of this state; or

~~(B)~~~~(2)~~ an association or corporation created under

the laws of this state or having its principal place of business in this state.

(b) If a contract to which this section applies contains a provision making the contract or any conflict arising under the contract subject to the laws of another

state, to litigation in the courts of another state, or to arbitration in another state, the provision must be set out conspicuously in [boldfaced] print, type, or other form of writing that is boldfaced, capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice. If the provision is not set out as provided by this subsection ~~in boldfaced print~~, the provision is voidable by a party against whom it is sought to be enforced.

SECTION 3. Section 1, Chapter 797, Acts of the 70th Legislature, Regular Session, 1987 (Article 489b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DISCLOSURES BY UNINSURED INSTITUTIONS. If a financial institution accepts deposits from the general public and the financial institution's deposits are not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, the financial institution may not represent that the deposits are federally insured. The contract between the financial institution and any person for deposits or investment of money must state the following in at least 10-point [boldfaced] type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous: "NOTICE TO PURCHASER: DEPOSITS AT THIS INSTITUTION ARE NOT INSURED BY ANY AGENCY OF THE FEDERAL GOVERNMENT." This Act does not apply to credit unions whose deposits or shares are insured or guaranteed in accordance with the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes).

SECTION 4. Subsection (h-1), Article 7.01, Title 79, Revised Statutes (Article 5069-7.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(h-1) In addition to the provisions of Section (h) of this article, "principal balance" includes a motor vehicle inspection fee and a documentary fee for services actually rendered to, for or on behalf of the retail buyer in preparing, handling, and processing documents relating to the motor vehicle and the closing of the transaction evidenced by the retail installment contract. If a documentary fee is charged:

- (i) it must be charged to both cash and credit buyers;
- (ii) it may not exceed \$25;
- (iii) it shall be disclosed on the retail installment contract as a separate itemized charge; and

(iv) all preliminary worksheets which are exhibited to the buyer in which the motor vehicle retail seller calculates a sale price for the buyer, the buyer's order, and the retail installment contract shall include in reasonable proximity to the point in the worksheet, buyer's order, and retail installment contract where the documentary fee is disclosed the amount of the documentary fee to be charged and the following notice in [boldface] type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. BUYERS MAY AVOID PAYMENT OF THE FEE TO THE SELLER BY HANDLING THE DOCUMENTS AND PERFORMING THE SERVICES RELATING TO THE CLOSING OF THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$25. THIS NOTICE IS REQUIRED BY LAW."

(v) If the language primarily used in the oral sales presentation is not the same as that in which the retail installment contract is written, the seller shall

furnish to the buyer a written statement containing the notice set out in Subsection (iv) in the language primarily used in the oral sales presentation.

SECTION 5. Subsection (c), Section 8, Chapter 222, Acts of the 70th Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Each contract must include the following statement printed in at least 10-point [boldfaced] type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

NOTICE TO CLIENT

(1) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.

(2) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THIS CAREER COUNSELING SERVICE, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE SERVICE BY MIDNIGHT NOT LATER THAN THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THE CONTRACT. THE WRITTEN NOTICE MUST BE SENT BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of service's home office)

(3) IF YOUR COMPLAINT IS NOT RESOLVED TO YOUR SATISFACTION BY THE SERVICE, YOU MAY RESOLVE YOUR COMPLAINT THROUGH ARBITRATION BY CONTACTING THE FOLLOWING ASSOCIATION:

(Name, address, and telephone number of the arbitration association)

SECTION 6. Subsection (e), Section 12, Health Spa Act (Article 5221I, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Each contract shall state in at least 10-point [boldfaced] type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

(2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY CANCEL THIS CONTRACT BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(4) "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL

THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office).“

SECTION 7. Subsection (b), Section 5, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Each contract must state the fees and percentages to be paid by the athlete to the athlete agent and must include the following statements printed in at least 10-point **[boldface]** type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

NOTICE TO CLIENT

(1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

(2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.

(3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT.

SECTION 8. Subsections (n) and (o), Section 6, Chapter 726, Acts of the 70th Legislature, Regular Session, 1987 (Article 8876, Vernon's Texas Civil Statutes), are amended to read as follows:

(n) The cover page of the disclosure statement must state, in a prominent location and in **[boldfaced]** type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, the date of the disclosure statement, and must include a statement that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this Act but that the disclosure statement has not been approved by any government agency or representative to ensure accuracy of the enclosed information.

(o) A copy of the standard contract form used by the provider must be attached as an exhibit to each disclosure statement. Each contract must include the following statement, in **[boldfaced]** type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, providing that the person who contracts with the provider may rescind the contract not later than the seventh day after the date on which the contract is executed or a disclosure statement that meets the requirements of this section is received, whichever occurs later: "You may cancel this contract at any time prior to midnight of the seventh day after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit." The contract must also include a statement, in **[boldfaced]** type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, as follows: "This document, if executed, constitutes a legal and binding contract between you and _____. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

If the contract is rescinded pursuant to this subsection, any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, must be returned in full within 30 days. The resident to whom the contract applies may not be required to move into the facility before the expiration of the seven-day period.

SECTION 9. Section 4, Article 9026, Revised Statutes, is amended to read as follows:

Sec. 4. The waiver disclosure notice shall be in no smaller print than 10-point [boldface] type, shall be boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, and shall contain the following disclosures:

(1) that the purchase of the collision damage waiver is not mandatory to the renting of the vehicle;

(2) that coverage under the renter's motor vehicle insurance policy purchased and in force in this state may cover the same amounts as covered by the collision damage waiver; and

(3) that by signing the rental contract the renter may become responsible for any damage to the vehicle even if not at fault.

SECTION 10. This Act applies only to a contract entered into or a disclosure statement delivered on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and a disclosure statement delivered before the effective date of this Act is governed by the law in effect when the disclosure statement was delivered, and that law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 1989.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 1356 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1356, Relating to the allocation and transfer of motor fuels tax revenues and certain other state revenues.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1356 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1356** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 619 WITH HOUSE AMENDMENT

Senator Truan called S.B. 619 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment - Carter

In Section 1, on page 1, line 10, insert the following language immediately before the word "local":

Provided, however, that a local school district may adopt policies limiting the accumulation of sick leave by paraprofessional and auxiliary employees to not less than twenty days. Sick leave accumulated by paraprofessionals and auxiliary employees is not transferable among districts.

The amendment was read.

On motion of Senator Truan and by unanimous consent, the Senate concurred in the House amendment to S.B. 619 viva voce vote.

HOUSE BILL 2808 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2808, Relating to allowing retired officers and employees of the Department of Public Safety to receive coverage and benefits through the mutual association for department employees.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2808 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2808** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

FLOOR PRIVILEGES GRANTED

On motion of Senator Henderson and by unanimous consent, Jeff Archer of the Legislative Council was granted privileges of the floor during discussion of **C.S.H.B. 432**.

COMMITTEE SUBSTITUTE**HOUSE BILL 432 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 432, Relating to the appraisal of property for ad valorem taxation, the imposition, administration, and collection of ad valorem taxes, and the administrative and judicial review of ad valorem tax matters; providing criminal penalties.

The bill was read second time.

Senator Henderson offered the following amendment to the bill:

Amend C.S.H.B. 432 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 1.07(b), Tax Code, is amended to read as follows:

(b) The official or agency shall address the notice to the property owner, the person designated under Section 1.111(f) to receive the notice for the property owner, if that section applies, or, if appropriate, the property owner's [his] agent at his address according to the most recent record in the possession of the official or agency. However, if a property owner files a written request that notices be sent to a particular address, the official or agency shall send the notice to the address stated in the request.

SECTION 2. Section 1.111, Tax Code, is amended to read as follows:

Sec. 1.111. REPRESENTATION OF PROPERTY OWNER. (a) A property [The] owner [of property] may designate a lessee or other person [in possession of the property] to act as the agent of the owner for any purpose under this title in connection with the property or the property owner.

(b) The designation of an agent must be made by written authorization [in writing] signed by the owner, a property manager authorized to designate agents for the owner, or other person authorized to act on behalf of the owner, and must clearly indicate that the person is authorized to act on behalf of the property owner [of the property] in property tax matters relating to the property or the property owner. The designation may authorize the agent to represent the owner in all property tax matters or in specific property tax matters as identified in the designation.

(c) [(b)] The designation of an agent under this section remains in effect until revoked in a written revocation filed with the appraisal district by the property owner [of the property]. A designation may be made to expire according to its own terms but is still subject to prior revocation by the property owner [of the property].

(d) A property owner may not designate more than one agent to represent the property owner in connection with an item of property. The designation of an agent in connection with an item of property revokes any previous designation of an agent in connection with that item of property.

(e) An agreement between an agent for a property owner and the chief appraiser relating to a matter that may be protested to the appraisal review board is not final unless approved by the appraisal review board.

(f) A property owner in writing filed with the appraisal district may direct the appraisal district, appraisal review board, and each taxing unit participating in the appraisal district to deliver all notices, tax bills, orders, and other communications relating to one or more specified items of the owner's property to a specified person instead of to the property owner. The instrument must clearly identify the person by name and give the person's address to which all notices, tax bills, orders, and other communications are to be delivered. The property owner may but is not required to designate the person's agent for other tax matters designated under Subsection (a) as the person to receive all notices, tax bills, orders, and other communications. The designation of an agent for other tax matters under Subsection (a) may also provide that the agent is the person to whom notices, tax bills, orders, and other communications are to be delivered under this subsection.

(g) An appraisal district, appraisal review board, or taxing unit may not require a person to designate an agent to represent the person in a property tax matter other than as provided by this section.

(h) The State Property Tax Board shall prescribe forms and adopt rules to facilitate compliance with this section.

SECTION 3. Section 1.12(a), Tax Code, is amended to read as follows:

(a) For purposes of this title, the median level of appraisal is the median appraisal ratio of a reasonable and representative sample of properties in an appraisal district or, for purposes of Section 41.43 or 42.26, of a sample of properties specified by that section.

SECTION 4. Subchapter A, Chapter 6, Tax Code, is amended by adding Section 6.035 to read as follows:

Sec. 6.035. RESTRICTIONS ON ELIGIBILITY AND CONDUCT OF BOARD MEMBERS AND CHIEF APPRAISERS AND THEIR RELATIVES. (a) An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual is related within the second degree by consanguinity or affinity to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district.

(b) A member of an appraisal district board of directors or a chief appraiser commits an offense if the board member continues to hold office or the chief appraiser remains employed knowing that an individual related within the second degree by consanguinity or affinity to the board member or chief appraiser is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district in which the member serves or the chief appraiser is employed. An offense under this subsection is a Class B misdemeanor.

(c) A chief appraiser commits an offense if the chief appraiser refers a person, whether gratuitously or for compensation, to another person for the purpose of obtaining an appraisal of property, whether or not the appraisal is for ad valorem tax purposes. An offense under this subsection is a Class B misdemeanor.

(d) An appraisal performed by a chief appraiser in a private capacity or by an individual related within the second degree by consanguinity or affinity to the chief appraiser may not be used as evidence in a protest or challenge under Chapter 41 or an appeal under Chapter 42 concerning property that is taxable in the appraisal district in which the chief appraiser is employed.

SECTION 5. Subchapter A, Chapter 6, Tax Code, is amended by adding Section 6.036 to read as follows:

Sec. 6.036. INTEREST IN CERTAIN CONTRACTS PROHIBITED. (a) An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:

(1) the appraisal district; or

(2) a taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by this title.

(b) An appraisal district may not enter into a contract with a member of the board of directors of the appraisal district or with a business entity in which a member of the board has a substantial interest.

(c) A taxing unit may not enter into a contract relating to the performance of an activity governed by this title with a member of the board of directors of an appraisal district in which the taxing unit participates or with a business entity in which a member of the board has a substantial interest.

(d) For purposes of this section, an individual has a substantial interest in a business entity if:

(1) the combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business entity; or

(2) the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

(e) In this section, "business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

(f) This section does not limit the application of any other law, including the common law relating to conflicts of interest, to an appraisal district director.

SECTION 6. Section 6.04, Tax Code, is amended by amending Subsection (b) and adding Subsections (d), (e), (f), and (g) to read as follows:

(b) The board may meet at any time at the call of the chairman or as provided by board rule, but may not meet less often than once each calendar quarter.

(d) The board shall develop and implement policies that provide the public with reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the board. Reasonable time shall be provided during each board meeting for public comment on appraisal district and appraisal review board policies and procedures, and a report from the taxpayer liaison officer if one is required by Section 6.052.

(e) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board.

(f) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and the appropriate taxing jurisdictions.

(g) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

SECTION 7. Section 6.05, Tax Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The chief appraiser may not employ any individual related to a member of the board of directors within the second degree by affinity or within the third degree by consanguinity. A person commits an offense if the person intentionally or knowingly violates this subsection. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$1,000.

(g) The chief appraiser is an officer of the appraisal district for purposes of the nepotism law, Article 5996a, Revised Statutes. An appraisal district may not employ or contract with an individual or the spouse of an individual who is related to the chief appraiser within the first degree by consanguinity or affinity.

SECTION 8. Subchapter A, Chapter 6, Tax Code, is amended by adding Section 6.052 to read as follows:

Sec. 6.052. TAXPAYER LIAISON OFFICER. (a) The board of directors for an appraisal district created for a county with a population of more than 80,000 shall appoint a taxpayer liaison officer who shall serve at the pleasure of the board. The taxpayer liaison officer shall administer the public access functions required by Subsections 6.04(d), (e), and (f), and is responsible for resolving disputes not involving matters that may be protested under Section 41.41.

(b) The taxpayer liaison officer may provide information and materials designed to assist property owners in understanding the appraisal process, protest procedures, and related matters.

(c) The taxpayer liaison officer shall report to the board at each meeting on the status of all complaints filed with the board under Section 6.04(g).

(d) The taxpayer liaison officer is entitled to compensation as provided by the budget adopted by the board of directors.

SECTION 9. Section 6.06, Tax Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) Each year the chief appraiser shall prepare a proposed budget for the operations of the district for the following tax year and shall submit copies to each taxing unit participating in the district and to the district board of directors before June 15. He shall include in the budget a list showing each proposed position, the proposed salary for the position, all benefits proposed for the position, each proposed capital expenditure, and an estimate of the amount of the budget that will be allocated to each taxing unit. Each taxing unit entitled to vote on the appointment of board members shall maintain a copy of the proposed budget for public inspection at its principal administrative office.

(j) If the total amount of the payments made or due to be made by the taxing units participating in an appraisal district exceeds the amount actually spent or obligated to be spent during the fiscal year for which the payments were made, the chief appraiser shall credit the excess amount against each taxing unit's allocated payments for the following year in proportion to the amount of each unit's budget allocation for the fiscal year for which the payments were made. If a taxing unit that paid its allocated amount is not allocated a portion of the district's budget for the following fiscal year, the chief appraiser shall refund to the taxing unit its proportionate share of the excess funds not later than the 150th day after the end of the fiscal year for which the payments were made.

SECTION 10. Subchapter A, Chapter 6, Tax Code, is amended by adding Section 6.062 to read as follows:

Sec. 6.062. PUBLICATION OF BUDGET. (a) Not later than the 10th day before the date of the public hearing at which the board of directors considers the appraisal district budget, the chief appraiser shall give notice of the public hearing by publishing the notice in a newspaper having general circulation in the county for which the appraisal district is established. The notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper and may not be published in the part of the paper in which legal notices and classified advertisements appear.

(b) The notice must set out the time, date, and place of the public hearing and must set out a summary of the proposed budget. The summary must set out as separate items:

- (1) the total amount of the proposed budget;
- (2) the amount of increase proposed from the budget adopted for the current year; and
- (3) the number of employees compensated under the current budget and the number of employees to be compensated under the proposed budget.

(c) The notice must state that the appraisal district is supported solely by payments from the local taxing units served by the appraisal district. The notice must also contain the following statement: "If approved by the appraisal district board of directors at the public hearing, this proposed budget will take effect automatically unless disapproved by the governing bodies of the county, school districts, cities, and towns served by the appraisal district. A copy of the proposed budget is available for public inspection in the office of each of those governing bodies."

SECTION 11. Sections 6.41(b) and (c), Tax Code, are amended to read as follows:

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to not more than nine members or, in a district established for a county with a population of at least 250,000, to not more than 15 members or, in a district established for a county with a population of at least 500,000, to not

more than 30 members or, in a district established for a county with a population of at least 1,500,000, to not more than 45 members.

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years. A member of the appraisal district board of directors or an officer or employee of the State Property Tax Board, the appraisal office, or a taxing unit is ineligible to serve on the board. In an appraisal district established for a county having a population of more than 50,000, an individual who has served for all or part of three previous terms on the appraisal review board is ineligible to serve on the appraisal review board. In an appraisal district established for any other county, an individual who has served for all or part of two consecutive terms on the appraisal review board is ineligible to serve on the appraisal review board during a term that begins on the next January 1 following the second of those consecutive terms.

SECTION 12. Subchapter C, Chapter 6, Tax Code, is amended by adding Section 6.412 to read as follows:

Sec. 6.412. RESTRICTIONS ON ELIGIBILITY OF BOARD MEMBERS.

(a) An individual is ineligible to serve on an appraisal review board if the individual is related within the second degree by consanguinity or affinity to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established.

(b) A member of an appraisal review board commits an offense if the board member continues to hold office knowing that an individual related within the second degree by consanguinity or affinity to the board member is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established. An offense under this subsection is a Class B misdemeanor.

SECTION 13. Subchapter C, Chapter 6, Tax Code, is amended by adding Section 6.413 to read as follows:

Sec. 6.413. INTEREST IN CERTAIN CONTRACTS PROHIBITED.

(a) An individual is not eligible to be appointed to or to serve on the appraisal review board established for an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with the appraisal district or with a taxing unit that participates in the appraisal district.

(b) An appraisal district may not enter into a contract with a member of the appraisal review board established for the appraisal district or with a business entity in which a member of the appraisal review board has a substantial interest.

(c) A taxing unit may not enter into a contract with a member of the appraisal review board established for an appraisal district in which the taxing unit participates or with a business entity in which a member of the appraisal review board has a substantial interest.

(d) For purposes of this section, an individual has a substantial interest in a business entity if:

(1) the combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business entity; or

(2) the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

(e) In this section, "business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

(f) This section does not limit the application of any other law, including the common law relating to conflicts of interest, to an appraisal review board member.

SECTION 14. Section 11.11, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) For purposes of this section, an improvement is owned by the state and is used for public purposes if it is:

- (1) located on land owned by the Texas Department of Corrections;
- (2) leased and used by the department; and
- (3) subject to a lease-purchase agreement providing that legal title to the improvement passes to the department at the end of the lease period.

SECTION 15. Chapter 22, Tax Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. OTHER REPORTS

Sec. 22.41. REPORT OF POLITICAL SUBDIVISION ACTIONS AFFECTING REAL PROPERTY VALUES. (a) At the request of the chief appraiser of an appraisal district in which a political subdivision of this state has territory, the governing body of the political subdivision shall deliver a written report to the chief appraiser describing each of the following actions taken by the governing body in the preceding period specified in the request:

- (1) a zoning action;
- (2) an action that directly restricts the use of real property or a class of real property specified by the action or that exempts real property or a class of real property specified by the action from an existing restriction on the use of the property; or
- (3) an action that grants the owner or custodian of real property specified by the action the right or authority to make a change or improvement to the property.

(b) The report is not required to include an action that does not apply to real property in the appraisal district whose chief appraiser requested the report.

(c) The chief appraiser in the request for a report shall specify the period to be covered by the report. The governing body is not required to include in the report an action included in a previous report made to the chief appraiser of the same appraisal district. The governing body must deliver the report to the chief appraiser not later than the 30th day after the date of the request, unless the chief appraiser specifies or agrees to a later date.

(d) As soon as practicable after delivering a report to the chief appraiser under Subsection (c), the governing body making the report shall deliver a copy of the report to the governing body of each taxing unit in which is located property affected by an action included in the report.

SECTION 16. Section 23.12, Tax Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The owner of an inventory may elect to have the inventory appraised at its market value as of September 1 of the year preceding the tax year to which the appraisal applies by filing an application with the chief appraiser requesting that the inventory be appraised as of September 1. The application must clearly describe the inventory to which it applies and be signed by the owner of the inventory. The application applies to the appraisal of the inventory in each tax year that begins after the next August 1 following the date the application is filed with the chief appraiser unless the owner of the inventory by written notice filed with the chief appraiser revokes the application or the ownership of the inventory changes. A notice revoking the application is effective for each tax year that begins after the next September 1 following the date the notice of revocation is filed with the chief appraiser.

(g) An inventory shall be appraised at its market value as of September 1, 1989, for the 1990 tax year if on or after July 1, 1989, and before August 1, 1989, the owner of the inventory delivers a written request to the chief appraiser to have the

inventory appraised as of September 1, 1989, for the 1990 tax year. The request must clearly identify the inventory to which it applies and be signed by the owner of the inventory. A request made under this subsection applies only to the taxation of the inventory for the 1990 tax year. This subsection expires January 1, 1991.

SECTION 17. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.20 to read as follows:

Sec. 23.20. WAIVER OF SPECIAL APPRAISAL. (a) An owner of real property may in writing waive the right to special appraisal provided by Subchapter C, D, E, F, or G of this chapter as to one or more taxing units designated in the waiver. In a tax year in which a waiver is in effect, the property is appraised for each taxing unit to which the waiver applies at the value determined under Subchapter A of this chapter or the value determined under Subchapter C, D, E, F, or G of this chapter, whichever is the greater value.

(b) A waiver may be submitted with an application for appraisal under Subchapter C, D, E, F, or G of this chapter or at any other time. A property owner who has waived special appraisal under this section as to one or more taxing units may make additional waivers under this section as to other taxing units in which the property is located.

(c) A waiver under this section is effective for 25 consecutive tax years beginning on the first tax year in which the waiver is effective without regard to whether the property is subject to appraisal under Subchapter C, D, E, F, or G of this chapter. To be effective in the year in which the waiver is executed, it must be filed before May 1 of that year with the chief appraiser of the appraisal district in which the property is located, unless for good cause shown the chief appraiser extends the filing deadline for not more than 60 days. An application filed after the year's deadline takes effect in the next tax year.

(d) A waiver filed under this section is applicable to the property for the term of the waiver, runs with the land, and is binding on the owner who executed the waiver and any successor in interest. A waiver may not be revoked as to any taxing unit except on approval by official action of the governing body of the taxing unit on a finding by the governing body that the revocation of the waiver would not materially impair the contractual, bond, or other debt obligation of the taxing unit wholly or partly payable from property taxes to which the property is subject. An application for revocation must be filed with the governing body of each taxing unit to which the revocation is to apply. A waiver may not be revoked if revocation is prohibited under a rule adopted under Subsection (e) of this section. The revocation is effective in the year in which the governing body approves the revocation if the chief appraiser receives a written notice of the approval before the appraisal review board approves the appraisal records. If the notice is not received before the deadline the revocation takes effect in the next tax year.

(e) The Texas Water Commission, a commissioners court, and the State Highway and Public Transportation Commission each, by rule, may ensure that a waiver under this section is properly and timely executed, and is irrevocable by the owner of the property to which the waiver applies or by any other related person receiving or proposing to receive, directly or indirectly, the proceeds of any bonds issued by or to be issued by the taxing unit. The rules of the water commission apply to waivers applicable to taxing units that are conservation and reclamation districts subject to the jurisdiction of the commission. The rules of the commissioners court apply to waivers applicable to taxing units that are road districts created by the commissioners court. The rules of the highway and public transportation commission apply to waivers applicable to taxing units that are road utility districts subject to the jurisdiction of the commission.

(f) For computations required to be made under this title, the appraised value of the property for taxation by a taxing unit to which a waiver applies is the value at which the property is taxed under this section.

(g) A waiver of a special appraisal of property under Subchapter C, D, E, F, or G of this chapter does not constitute a change of use of the property or diversion of the property to another use for purposes of the imposition of additional taxes under any of those subchapters.

SECTION 18. Section 23.46(c), Tax Code, is amended to read as follows:

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of additional taxes for the three years preceding the year in which the land is sold or diverted plus interest at the rate provided for delinquent taxes becomes due. A determination that the land has been diverted to a nonagricultural use is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the [The] assessor for each taxing unit shall prepare and deliver a bill [statement] for the additional taxes plus interest as soon as practicable after the [sale or] change of use occurs. If the additional taxes are due because of a sale of the land, the assessor for each taxing unit shall prepare and deliver the bill as soon as practicable after the sale occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land [of the year following the year in which the sale or change of use occurs].

SECTION 19. Section 23.51(2), Tax Code, is amended to read as follows:

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use.

SECTION 20. Section 23.55(e), Tax Code, is amended to read as follows:

(e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the [The] assessor for each taxing unit shall prepare and deliver a bill [statement] for the additional taxes plus interest as soon as practicable [after the change of use occurs]. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land [of the year after the year in which the change of use occurs].

SECTION 21. Section 23.76(e), Tax Code, is amended to read as follows:

(e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final

determination of the protest is that the additional taxes are due, the ~~[The]~~ assessor for each taxing unit shall prepare and deliver a bill ~~[statement]~~ for the additional taxes and interest as soon as practicable after the change of use occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land ~~[of the year after the year in which the change of use occurs]~~.

SECTION 22. Section 25.12, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) If a written request for joint taxation has been filed under Subsection (b), the notice of appraised value provided for by Section 25.19 for the owners included in the request for joint taxation shall be delivered to the operator, owner, or owners of the mineral interest in whose name the mineral interest is designated for joint taxation. The chief appraiser is not required to deliver a separate notice of appraised value to each owner included in the request for joint taxation. However, the chief appraiser shall deliver a separate notice of appraised value to an owner of an interest in the property who before May 1 files a written request to receive a separate notice of appraised value with the chief appraiser on a form provided by the appraisal district for that purpose. The request is effective for each subsequent year until revoked by the owner or until the owner no longer owns an interest in the property.

SECTION 23. Section 25.18(b), Tax Code, is amended to read as follows:

(b) The plan shall provide for reappraisal of all real property in the district at least once every three ~~four~~ years.

SECTION 24. Section 25.19, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) By May 15 or as soon thereafter as practicable, the chief appraiser shall deliver a written notice to the owner of each property not included in a notice required to be delivered under Subsection (a), if the property was reappraised in the current tax year or if the ownership of the property changed during the preceding year. The chief appraiser shall separate real from personal property and include in the notice for each property:

- (1) the appraised value of the property in the preceding year;
- (2) the appraised value of the property for the current year and the kind of each partial exemption, if any, approved for the current year;
- (3) a brief explanation of the time and procedure for protesting the value; and
- (4) the date and place the appraisal review board will begin hearing protests.

SECTION 25. Section 25.20, Tax Code, is amended to read as follows:

Sec. 25.20. ACCESS BY ~~[NOTICE TO]~~ TAXING UNITS. ~~[(a) By May 15,~~ the chief appraiser shall submit to each taxing unit in the district a certified estimate of the total appraised value of all property in the district that is taxable by unit.

~~[(b)]~~ The chief appraiser shall give the assessor for a taxing unit in the district reasonable access to the appraisal records at any time.

SECTION 26. Section 25.22(a), Tax Code, is amended to read as follows:

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall submit the completed appraisal records to the appraisal review board for review and determination of protests. However, the chief appraiser may not submit the records until the chief appraiser ~~[he]~~ has delivered the notices required by Subsection (d) of Section 11.45, Subsection (d) of Section 23.44, Subsection (d) of Section 23.57, Subsection (d) of Section 23.79, Subsection (d) of Section 23.85, Subsection (d) of Section 23.95, and Section ~~[Sections] 25.19 [and 25.20 of this code]~~.

SECTION 27. Section 25.23(c), Tax Code, is amended to read as follows:

(c) As soon as practicable after determining the appraised value of a property listed in supplemental appraisal records, the chief appraiser shall deliver the notice

[notices] required by Section [Sections] 25.19 [and 25.20 of this code], if applicable, and submit the records for review and determination of protest as provided by Section 25.22 [of this code].

SECTION 28. Section 25.25(c), Tax Code, is amended to read as follows:

(c) At any time before the end of three years after January 1 of a tax year, the appraisal review board, on motion of the chief appraiser[;] or of a property owner, may direct by written order changes in the appraisal roll to correct:

(1) clerical errors that affect a property owner's liability for a tax imposed in that tax year; or

(2) multiple appraisals of a property in that [a single] tax year.

SECTION 29. Section 26.12(c), Tax Code, is amended to read as follows:

(c) If a taxing unit is created too late for observance of the deadline provided by Section 26.01 of this code for certification of the appraisal roll to the assessor for the unit, the chief appraiser shall submit the appraisal roll as provided by Section 26.01 as soon as practicable. [If a taxing unit is created too late for observance of the deadline provided by Section 25.20 of this code for submitting to the unit a certified estimate of the total appraised value of property taxable by the unit, the chief appraiser shall submit that estimate to the unit as soon as practicable.]

SECTION 30. Sections 31.12(a) and (b), Tax Code, are amended to read as follows:

(a) If a refund of a tax provided by Section 11.431(b), 26.07(g), 26.15(f), or 31.11[; or 42.43 of this code] is paid on or before the 60th day after the date the liability for the refund arises, no interest is due on the amount refunded. If not paid on or before that 60th day, the amount of the tax to be refunded accrues interest at a rate of one percent for each month or part of a month that the refund is unpaid, beginning with the date on which the liability for the refund arises.

(b) For purposes of this section, liability for a refund arises:

(1) if the refund is required by Section 11.431(b) [of this code], on the date the chief appraiser notifies the collector for the unit of the approval of the late homestead exemption;

(2) if the refund is required by Section 26.07(g) [of this code], on the date the results of the election to reduce the tax rate are certified;

(3) if the refund is required by Section 26.15(f) [of this code]:

(A) for a correction to the tax roll made under Section 26.15(b) [of this code], on the date the change in the tax roll is certified to the assessor for the taxing unit under Section 25.25 [of this code]; or

(B) for a correction to the tax roll made under Section 26.15(c) [of this code], on the date the change in the tax roll is ordered by the governing body of the taxing unit; or

(4) if the refund is required by Section 31.11 [of this code], on the date the auditor for the taxing unit or, if the amount of the refund exceeds \$500, the governing body of the unit determines that the payment was erroneous or excessive[; or

[(5) if the refund is required by Section 42.43 of this code, on the date the determination of the appeal becomes final].

SECTION 31. Section 33.011, Tax Code, is amended to read as follows:

Sec. 33.011. WAIVER OF PENALTIES AND INTEREST. The governing body of a taxing unit may provide for the waiver of penalties and interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid within 21 days after the taxpayer knows or should know of the delinquency.

SECTION 32. Sections 34.01(c) and (d), Tax Code, are amended to read as follows:

(c) If a sufficient bid is not received, the officer making the sale shall bid the property off to a taxing unit that is a party to the judgment for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less. The taxing unit takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. The taxing unit's title includes all the interest owned by the defendant, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption. Payments in satisfaction of the judgment and any costs or expenses may not be required until the property is redeemed or resold by the purchasing taxing unit.

(d) The officer making the sale shall prepare a deed to the purchaser of real property at the sale or to any other person whom the purchaser may specify. The deed vests good and perfect title in the purchaser or the purchaser's [his] assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption. The deed may be impeached only for fraud.

SECTION 33. Section 34.21, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The right of redemption does not grant or reserve in the former owner of the real property the right to the use or possession of the property, or to receive rents, income, or other benefits from the property while the right of redemption exists.

SECTION 34. Section 41.41, Tax Code, is amended to read as follows:

Sec. 41.41. RIGHT OF PROTEST. A property owner is entitled to protest before the appraisal review board the following actions:

(1) determination of the appraised value of the owner's [his] property or, in the case of land appraised as provided by Subchapter C, D, or E, Chapter 23 ~~[of this code]~~, determination of its appraised or market value;

(2) unequal appraisal of the owner's [his] property ~~[in comparison to the median level of appraisals of other property in the appraisal district];~~

(3) inclusion of the owner's [his] property on the appraisal records;

(4) denial to the property owner [him] in whole or in part of a partial exemption;

(5) determination that the owner's [his] land does not qualify for appraisal as provided by Subchapter C, D, or E, Chapter 23 ~~[of this code];~~

(6) identification of the taxing units in which the owner's [his] property is taxable in the case of the appraisal district's appraisal roll;

(7) determination that the property owner [he] is the owner of property; [or]

(8) a determination that a change in use of land appraised under Subchapter C, D, or E, Chapter 23, has occurred; or

(9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner [and adversely affects him].

SECTION 35. Section 41.43, Tax Code, is amended to read as follows:

Sec. 41.43. PROTEST OF INEQUALITY OF APPRAISAL. A protest on the ground of unequal appraisal of property shall ~~[may not]~~ be determined in favor of the protesting party if the protesting party [unless he] establishes that the appraisal ratio of the [his] property is [appraised at a level] greater than the median level of appraisal of:

(1) a reasonable and representative sample of other properties in the appraisal district; or

(2) a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the protest.

SECTION 36. Sections 41.44(a), (c), and (d), Tax Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (c) ~~[of this section]~~, to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(1) before June 1 or not later than the 30th day after the date that notice was delivered to the property owner as provided by Section 25.19 ~~[of this code]~~, whichever is later; ~~[or]~~

(2) in the case of a protest of a change in the appraisal records ordered as provided by Subchapter A ~~[of this chapter]~~, within 10 days after the date notice of the change is delivered to the property owner; ~~or~~

(3) in the case of a determination that a change in the use of land appraised under Subchapter C, D, or E, Chapter 23, has occurred, not later than the 30th day after the date the notice of the determination is delivered to the property owner.

~~(c) A property owner who files notice of a protest authorized by Section 41.411 [of this code] is entitled to a hearing and determination of the protest if he files the notice prior to the date the taxes on the property to which the notice applies become delinquent. An owner of land who files a notice of protest under Subsection (a)(3) is entitled to a hearing and determination of the protest without regard to whether the appraisal records are approved.~~

(d) A notice of protest is sufficient if it identifies the protesting property owner, including a person claiming an ownership interest in the property even if that person is not listed on the appraisal records as an owner of the property, identifies [and] the property that is the subject of the protest, and indicates apparent dissatisfaction with some determination of the appraisal office. The notice need not be on an official form, but the State Property Tax Board shall prescribe a form that provides for more detail about the nature of the protest. The form must permit a property owner to include each property in the appraisal district that is the subject of a protest. The State Property Tax Board, each appraisal office, and each appraisal review board shall make the forms readily available and deliver one to a property owner on request.

SECTION 37. Section 41.45, Tax Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) On the filing of a notice as required by Section 41.44 ~~[of this code]~~, the appraisal review board shall schedule a hearing on the protest. If more than one protest is filed relating to the same property, the appraisal review board shall schedule a single hearing on all timely filed protests relating to the property. A hearing for a property that is owned in undivided or fractional interests, including separate interests in a mineral in place, shall be scheduled to provide for participation by all owners who have timely filed a protest.

(e) The board shall postpone the hearing to a later date if the property owner or the owner's agent shows good cause for the postponement or if the chief appraiser consents to the postponement. The hearing may not be postponed to a date less than five or more than 15 days after the date scheduled for the original hearing unless the date and time of the hearing as postponed are agreed to by the appraisal review board, the property owner, and the chief appraiser. Postponement under this subsection does not require the delivery of additional written notice to the property owner.

SECTION 38. Section 41.61, Tax Code, is amended to read as follows:

Sec. 41.61. ISSUANCE OF SUBPOENA. (a) If reasonably necessary in the course of a protest ~~[proceeding]~~ provided by this chapter, the appraisal review board on its own motion or at the written request of a party to the protest, may subpoena

witnesses or books, records, or other documents of the property owner or appraisal district that relate to the protest.

(b) On the written request of a party to a protest [proceeding] provided by this chapter, the appraisal review board shall issue a subpoena if the requesting party:

(1) shows good cause for issuing the subpoena; and

(2) deposits with the board a sum the board determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed.

(c) An appraisal review board may not issue a subpoena under this section unless the board holds a hearing at which the board determines that good cause exists for the issuance of the subpoena.

SECTION 39. Section 41.66, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The appraisal review board may not consider any appraisal district information on a protest that was not presented to the appraisal review board during the protest hearing.

(f) An employee of the appraisal district or a property owner or the owner's agent may not communicate with or present information to the appraisal review board relating to property that is the subject of a protest except during the appraisal review board hearing on the protest or at a hearing on another protest or other proceeding before the appraisal review board at which the property is compared to other property or used in a sample group of properties. At a hearing on a protest, the chief appraiser and the property owner or the owner's agent shall sign an affidavit stating that they have not, in violation of this subsection, communicated with or presented any information to the appraisal review board on the property that is the subject of the hearing before the protest hearing.

SECTION 40. Subchapter D, Chapter 41, Tax Code, is amended by adding Section 41.70 to read as follows:

Sec. 41.70. PUBLIC NOTICE OF PROTEST AND APPEAL PROCEDURES. (a) On or after May 1 but not later than May 15, the chief appraiser shall publish notice of the manner in which a protest under this chapter may be brought by a property owner. The notice must describe how to initiate a protest and must describe the deadlines for filing a protest. The notice must also describe the manner in which an order of the appraisal review board may be appealed. The State Property Tax Board by rule shall adopt minimum standards for the form and content of the notice required by this section.

(b) The chief appraiser shall publish the notice in a newspaper having general circulation in the county for which the appraisal district is established. The notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and may not be published in the part of the paper in which legal notices and classified advertisements appear.

SECTION 41. Section 42.031, Tax Code, is amended to read as follows:

Sec. 42.031. RIGHT OF APPEAL BY TAXING UNIT. (a) A taxing unit is entitled to appeal an order of the appraisal review board determining a challenge by the taxing unit.

(b) A taxing unit may not intervene in or in any other manner be a party to an appeal of an order of the appraisal review board determining a taxpayer protest under Subchapter C, Chapter 41, if the appeal was brought by the property owner.

SECTION 42. Section 42.06, Tax Code, is amended to read as follows:

Sec. 42.06. NOTICE OF APPEAL. (a) To exercise the party's [his] right to [of] appeal an order of an appraisal review board, a party other than a property owner must file written notice of appeal within 15 days after the date the party [he] receives the notice required by Section 41.47 or, in the case of a taxing unit, by Section 41.07 [of this code] that the order appealed has been issued. To exercise the

right to appeal an order of the State Property Tax Board, a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the board's order.

(b) The owner of an item of property having an appraised value in excess of \$1 million who appeals an order of the appraisal review board or State Property Tax Board under this chapter must file a written notice of appeal not later than the 15th day after the date the owner receives the notice required by Section 41.47 or the order of the State Property Tax Board, as applicable. A property owner who fails to comply with this subsection does not forfeit the right to appeal, but is liable for a penalty to each taxing unit in which the property is taxable in an amount equal to five percent of the taxes finally determined to be due on the property. For purposes of this subsection, the appraised value of the property is its appraised value for the current year according to the certified appraisal roll or the determination of the State Property Tax Board, as applicable, as modified by order of the appraisal review board or State Property Tax Board pursuant to a protest.

(c) A party other than a chief appraiser who appeals an order of an appraisal review board shall file the notice with the chief appraiser of the appraisal district for which the appraisal review board is established. A chief appraiser who appeals an order of an appraisal review board shall file the notice with the appraisal review board. A party who appeals an order of the State Property Tax Board shall file the notice [appeal] with the State Property Tax Board.

(d) ~~(c)~~ If the chief appraiser, a taxing unit, or a county appeals, the chief appraiser, if the appeal is of an order of the appraisal review board, or the State Property Tax Board, if the appeal is of an order of the State Property Tax Board, shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

(e) ~~(d)~~ On the filing of a notice of appeal, the chief appraiser shall indicate where appropriate those entries on the appraisal records that are subject to the appeal.

SECTION 43. Section 42.08, Tax Code, is amended to read as follows:

Sec. 42.08. FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES. (a) The pendency of an appeal as provided by this chapter does not affect the delinquency date for the taxes on the property subject to the appeal [become delinquent]. However, that delinquency date applies only to the amount of taxes required to be paid under Subsection (b). If the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined by Section 42.42(c), and that additional amount is not delinquent before that date.

(b) A property owner who appeals as provided by this chapter must pay taxes on the property subject to the appeal in the amount required by this subsection [the tax due on the amount of value of the property involved in the pending action that is not in dispute or the amount of tax paid on the property in the preceding year, whichever is greater, but not to exceed the amount of tax that would be due under the order from which the pending appeal was taken;] before the delinquency date or the property owner [he] forfeits the [his] right to proceed to a final determination of the appeal [pending action]. The amount of taxes the property owner must pay on the property before the delinquency date to comply with this subsection is:

(1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute or the amount of taxes imposed on the property in the preceding year, whichever is greater; or

(2) the amount of taxes due on the property under the order from which the appeal is taken.

(c) A property owner that pays the amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination

of the appeal by making the payment. If the property owner files a timely appeal under this chapter, taxes paid on the property are considered paid under protest, even if paid before the appeal is filed.

(d) On [Upon] the motion of a party, the court shall hold a hearing to review and determine compliance with this section. If the court determines that the property owner has not substantially complied with this section, the court shall dismiss the pending action. If the court determines that the property owner has substantially but not fully complied with this section, the court shall dismiss the pending action unless the property owner fully complies with the court's determination within 30 days of the determination.

SECTION 44. Section 42.21, Tax Code, is amended to read as follows:

Sec. 42.21. PETITION FOR REVIEW. (a) A party who appeals as provided by this chapter must file a petition for review with the district court within 45 days after the party received notice that a final order has been entered from which an appeal may be had. Failure [-failure] to timely file a petition bars any appeal under this chapter [section].

(b) A petition for review brought under Section 42.02 [of this code] must be brought against [the appraisal review board and against] the owner of the property involved in the appeal. A petition for review brought under Section 42.031 [of this code] must be brought against the appraisal district [and the appraisal review board] and against the owner of the property involved in the appeal. A petition for review brought under Subdivision (2) or (3) of Section 42.01 or under Section 42.03 must be brought against the State Property Tax Board. Any other petition for review under this chapter must be brought against the appraisal district. A petition for review is not required to be brought against [and] the appraisal review board, but may be brought against the appraisal review board in addition to any other required party, if appropriate.

(c) If an appeal under this chapter is pending when the appraisal review board issues an order in a subsequent year under a protest by the same property owner and that protest relates to the same property that is involved in the pending appeal, the property owner may appeal the subsequent appraisal review board order by amending the original petition for the pending appeal to include the grounds for appealing the subsequent order. The amended petition must be filed with the court in the period provided by Subsection (a) for filing a petition for review of the subsequent order. A property owner may appeal the subsequent appraisal review board order under this subsection or may appeal the order independently of the pending appeal as otherwise provided by this section, but may not do both. A property owner may change the election of remedies provided by this subsection at any time before the end of the period provided by Subsection (a) for filing a petition for review.

(d) An appraisal district is served by service on the chief appraiser at any time or by service on any other officer or employee of the appraisal district present at the appraisal office at a time when the appraisal office is open for business with the public. An appraisal review board is served by service on the chairman of the appraisal review board. Citation of a party is issued and served in the manner provided by law for civil suits generally.

SECTION 45. Section 42.26, Tax Code, is amended to read as follows:

Sec. 42.26. REMEDY FOR UNEQUAL APPRAISAL. (a) The district court shall [may not] grant relief on the ground that a property is appraised unequally if the appraisal ratio [in comparison to the level of appraisals of other property in the appraisal district unless the appraised value] of the property exceeds by [varies] at least 10 percent [from its value calculated on the basis of] the median level of appraisal of:

(1) a reasonable and representative sample of other properties in the appraisal district; or

(2) a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the appeal.

(b) If a property owner is entitled to relief under Subsection (a)(1) [In that event], the court shall order the property's appraised value changed to the value as calculated on the basis of the median level of appraisal according to Subsection (a)(1) [of those properties]. If a property owner is entitled to relief under Subsection (a)(2), the court shall order the property's appraised value changed to the value calculated on the basis of the median level of appraisal according to Subsection (a)(2). If a property owner is entitled to relief under both Subsection (a)(1) and Subsection (a)(2), the court shall order the property's appraised value changed to the value calculated on the basis of the median level of appraisal that results in the lower appraised value. The court shall determine each applicable median level of appraisal according to law, and is not required to adopt the median level of appraisal proposed by a party to the appeal. The court may not limit or deny relief to the property owner entitled to relief under a subdivision of Subsection (a) because the appraised value determined according to the other subdivision of Subsection (a) results in a higher appraised value.

(c) For purposes of establishing the median level of appraisal under Subsection (a)(1), the median level of appraisal in the appraisal district as determined by the State Property Tax Board under Section 5.10 is admissible as evidence of the median level of appraisal of a reasonable and representative sample of properties in the appraisal district for the year of the board's determination, subject to the Texas Rules of Evidence and the Texas Rules of Civil Procedure.

SECTION 46. Section 42.43(b), Tax Code, is amended to read as follows:

(b) For a [If the] refund [is] made under this section because an exemption under Section 11.20 [of this code] that was denied by the chief appraiser or appraisal review board is granted, the taxing unit shall include with the refund interest on the amount refunded calculated at an annual rate of 10 percent from the date the amount refunded was paid by the property owner until the date the refund is made. For any other refund made under this section, the taxing unit shall include with the refund interest on the amount refunded at an annual rate of eight percent, calculated from the delinquency date for the taxes until the date the refund is made.

SECTION 47. Section 43.04, Tax Code, is amended to read as follows:

Sec. 43.04. SUIT TO COMPEL COMPLIANCE WITH DEADLINES. The governing body of a taxing unit may sue the chief appraiser or members of the appraisal review board, as applicable, for failure to comply with the deadlines imposed by Section [25.20(a);] 25.22(a), 26.01(a), or 41.12 [of this code]. If the court finds that the chief appraiser or appraisal review board failed to comply for good cause shown, the court shall enter an order fixing a reasonable deadline for compliance. If the court finds that the chief appraiser or appraisal review board failed to comply without good cause, the court shall enter an order requiring the chief appraiser or appraisal review board to comply with the deadline not later than the 10th day after the date the judgment is signed. In a suit brought under this section, the court may enter any other order the court considers necessary to ensure compliance with the court's deadline or the applicable statutory requirements. Failure to obey an order of the court is punishable as contempt.

SECTION 48. Section 6.411, Tax Code, is repealed.

SECTION 49. (a) This Act takes effect September 1, 1989, except that:

(1) Sections 8, 14, 19, 28, and 48 of this Act and the change in law made by Section 11 of this Act to Section 6.41(b), Tax Code, take effect January 1, 1990; and

(2) this section, Sections 3, 17, 30, 31, 32, 33, 42, 43, 44, 45, and 46 of this Act, and Section 41.45(e), Tax Code, as added by Section 37 of this Act, take effect immediately.

(b) The change in law made by Sections 5 and 13 of this Act does not affect the validity of a contract executed before the effective date of those sections.

(c) The change in law made by Sections 4, 5, 11, 12, and 13 of this Act does not affect the eligibility of a director of an appraisal district or an appraisal review board member to complete the term being served on the effective date of those sections.

(d) The change in law made by Sections 4 and 5 of this Act does not affect the eligibility of an individual nominated or appointed to an appraisal district board of directors before the effective date of those sections to be appointed to or to serve for the term to which the individual was nominated or appointed before the effective date of those sections.

(e) The change in law made by Sections 32 and 33 of this Act applies only to a tax sale held on or after the effective date of those sections. The interest of the owner of real property sold at a tax sale before the effective date of those sections is covered by the law in effect when the tax sale was held, and the former law is continued in effect for that purpose.

(f) The change in law made by Sections 34, 35, 36, and 39 of this Act applies only to a protest for which the notice of protest is filed on or after the effective date of those sections.

(g) The change in law made by Section 38 of this Act does not affect the validity of a subpoena issued by an appraisal review board before the effective date of that section.

(h) The change in law made by Section 42 of this Act to Section 42.06(a), Tax Code, applies to any appeal filed under Chapter 42, Tax Code, on or after the effective date of Section 42. An appeal pending on the effective date of Section 42 is not barred because the property owner failed to file the notice of appeal as required by Section 42.06, Tax Code, before the effective date of Section 42.

(i) The change in law made by Section 43 of this Act applies to an appeal under Chapter 42, Tax Code, without regard to whether the appeal was filed or the taxes paid before the effective date of that section.

(j) The change in law made by Section 44 of this Act applies only to an appeal under Chapter 42, Tax Code, filed on or after the effective date of that section.

(k) The change in law made by Section 45 of this Act applies to an appeal under Chapter 42, Tax Code, that is pending in district court on the effective date of that section and to any appeal under Chapter 42, Tax Code, filed on or after that date.

(l) The change in law made by Sections 30 and 46 of this Act applies only to a refund paid on or after the effective date of this Act.

SECTION 50. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 432 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 432 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Dickson, Washington.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Dickson.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to the following bills by non-record votes:

H.B. 1101
H.B. 174
H.B. 1147
H.B. 1239
H.B. 1265
H.B. 1325
H.B. 1466
H.B. 2037
H.B. 1741
H.B. 2255
H.B. 2753
H.B. 2799
H.B. 3134

The House concurred in Senate amendments to H.B. 1588 by a record vote of 143 Yeas, 1 Nay, 1 Present-not voting on the revenue dedication portion of the bill, and passed the remainder of the bill by a record vote of 146 Yeas, 0 Nays, 1 Present-not voting.

The House concurred in Senate amendments to H.B. 1659 by a record vote of 144 Yeas, 0 Nays, 1 Present-not voting.

The House has concurred in Senate amendments to H.J.R. 6 by a record vote of 145 Yeas, 0 Nays, 2 Present-not voting.

H.C.R. 279, Recognizing the centennial observance of the International Boundary and Water Commission.

H.C.R. 278, Designating October 1989 as Texas Society of Architects Month.

H.C.R. 299, Congratulating the Texas Nature Conservancy.

H.C.R. 300, Designating Corpus Christi as the official city of the state celebration of the Quincentennial of Columbus' discovery of America.

H.C.R. 223, Congratulating Dr. Jack Davidson.

S.C.R. 114, Commending the Confederate Air Force, based at Rebel Field, Harlingen, for many years of great honor and credit upon the State of Texas.

S.C.R. 152, Celebrating the 150th anniversary of the Haynie Chapel United Methodist Church.

S.C.R. 73, In memory of Elena Sanchez of San Antonio.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**VOTE ON FINAL PASSAGE OF
COMMITTEE SUBSTITUTE HOUSE BILL 884 RECONSIDERED**

On motion of Senator Green and by unanimous consent, the vote by which **C.S.H.B. 884** was finally passed was reconsidered.

Question - Shall **C.S.H.B. 884** be finally passed?

Senator Green offered the following amendment to the bill:

Amend **C.S.H.B. 884**, Section 15, (b) by deleting, after the phrase "as added by," the reference to Section 2 and inserting in its place, "Section 1."

Amend Section 15, (c), by deleting, after the phrase "as amended by," the reference to Section 13, and inserting in its place, "Section 11."

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed viva voce vote.

HOUSE BILL 2064 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2064, Relating to the eligibility of certain municipalities to impose additional sales and use taxes.

The bill was read second time.

Senator Edwards offered the following committee amendment to the bill:

Amend **H.B. 2064** by inserting a new Section 2 to read as follows and renumbering existing Section 2 accordingly:

SECTION 2. Article 2351a-9, Revised Statutes, is amended by adding Section 17A to read as follows:

Sec. 17A. (a) A district may levy a sales and use tax for the benefit of the district if the tax is authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose. The district may adopt the tax at the rate of one-half of one percent, one percent, one and one-half of one percent, or two percent, but may not adopt the tax at a rate that would result in a combined rate of all sales and use taxes imposed by political subdivisions of this state in excess of two percent at any location in the district.

(b) If the district adopts the tax, there is imposed a tax on the receipts from the sale at retail of taxable items in the district at the tax rate adopted by the district. For purposes of this section, "taxable item" means all items subject to any sales and use tax that might also be imposed by a county having territory in the district. "Taxable item" does not include an item that would not be subject to a sales and use tax imposed by a county having territory in the district. Any change in the taxable status of an item for purposes of a sales and use tax imposed by a county having territory in the district shall effect the same change at the same time in taxable status of the item under this section. There is also imposed an excise tax on the use, storage, or other consumption within the district of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is in effect in the district. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the tangible personal property.

(c) Chapter 323, Tax Code, governs an election to authorize the imposition of the sales and use tax and governs the imposition, computation, administration, governance, and abolition of the tax, except that Sections 323.101(d) and (e), Tax Code, do not apply. The tax rate may be changed by an election called by the board of the district and conducted as provided for a tax election under Chapter 323, Tax Code. In determining procedures under Chapter 323, Tax Code, the district is substituted for the county and board of emergency commissioners is substituted for the commissioners court.

The committee amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to the bill:

Amend H.B. 2064 as follows:

(1) Add the following sentence to Subsection (a) of Section 17A in Section 2 of the bill as the last sentence of that subsection:

"This section applies only to a district whose boundaries are identical to those of a single county, including all territory within that county. Should a district adopt a tax under this section and cease to have boundaries identical to those of a single county, including all territory within that county, the tax shall cease being collected on the first day of the first quarter following thirty days after the boundaries of the district changed."

(2) In Subsection (c) of Section 17A in Section 2 of the bill, strike "Sections 323.101(d) and (e)" and substitute "Subsection 12(d) of this Article and Section 323.209"

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2064 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.B. 2064 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 850 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 850, Relating to requirements for issuance of a driver's license.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 850 ON THIRD READING

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 850** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2736 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2736, Relating to information services in state government.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2736 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2736** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 460 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 460, Relating to the practice of barbering and to the regulation of certain persons by the State Board of Barber Examiners.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 460 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 460** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1405 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1405, Relating to an employee of a local governmental body who reports a violation of law.

The bill was read second time.

Senator Sims offered the following amendment to the bill:

Amend **H.B. 1405** by adding subsection (e) to Section 3, Chapter 832, Acts of the 68th Legislative Session, 1983 (Article 6252-16a, Vernon's Texas Civil Statutes) to read as follows:

(e) If a final decision is not rendered within 30 days of initiation, the provisions of this Act do not apply.

The amendment was read and was adopted viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1405 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1405** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 638 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 638, Relating to the requirement that each institution of higher education establish a program or short course to assist certain faculty members to become proficient in the use of the English language.

The bill was read second time.

Senator McFarland offered the following committee amendment to the bill:

Amend **H.B. 638** by inserting "but does not include a medical or dental unit" on page 1, line 12 immediately after the word "code".

The committee amendment was read and was adopted viva voce vote.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 638 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.B. 638 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE REPORT SENATE BILL 95

Senator Parker submitted the following Conference Committee Report:

Austin, Texas
May 19, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 95 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PARKER
BARRIENTOS
ZAFFIRINI
JOHNSON
TRUAN
On the part of the Senate

BERLANGA
GLOSSBRENNER
G. LUNA
COLBERT
ARNOLD
On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to school guidance counselors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.26(d), Education Code, is amended to read as follows:

(d) The State Board of Education shall not adopt any policy, rule, regulation, or other plan which would require any school district within the state, as a prerequisite for accreditation or other approval, to hire any supervisor ~~or any guidance counselor~~.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2461 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2461, Relating to the acceptance of donations and collection of certain fees and compensation by the state law library.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2461 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2461** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1978 ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1978, Relating to the approval of employer-sponsored alcoholic beverage seller training programs.

The bill was read second time.

Senator Truan offered the following amendment to the bill:

Amend **C.S.H.B. 1978** by striking lines 37-42 and inserting the following in their place:

(c) The commission may approve under this section a seller training program sponsored by a licensee or permittee for the purpose of training their employees whether or not such employees are located at the same premises. This subsection shall only apply to licensees or permittees who employ at least 150 persons at any one time during the license or permit year who sell, serve or prepare alcoholic beverages.

The amendment was read and was adopted viva voce vote.

On motion of Senator Truan and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1978 ON THIRD READING**

Senator Truan moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1978** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2352 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2352, Relating to the regulation of tanning facilities; providing a criminal penalty.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2352 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2352** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1770 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1770, Relating to a requirement that the Texas Department of Human Services provide medical care for children born while the mother is imprisoned in the Texas Department of Corrections.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1770 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1770** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2408 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2408, Relating to railroad crossing safety information regarding railroad intersections in unincorporated areas of the state.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2408 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2408** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 3085 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3085, Relating to the regulation of hunting leases, private bird hunting areas, and field trial areas.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 3085 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3085** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

COMMITTEE SUBSTITUTE**HOUSE BILL 2033 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business, Senate Rule 7.13 and Senate Rule 5.14 were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2033, Relating to certain election processes and procedures.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Amend **C.S.H.B. 2033** as follows:

Delete SECTION 75 in its entirety.

The amendment was read and was adopted viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE**HOUSE BILL 2033 ON THIRD READING**

Senator Henderson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2033** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2178 ON THIRD READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 2178, Relating to a revision of Title 15, Election Code, regulating political funds and campaigns.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1848 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1848, Relating to the authorization of the governor to administer an oath, affidavit, or affirmation.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1848 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1848** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3187 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3187, Relating to the provision of municipal services to newly annexed areas; procedures for annexing and disannexing territory previously annexed for limited purposes and validation of annexations and disannexations by a municipality authorized to annex for limited purposes; designation of planned unit developments in the extraterritorial jurisdiction of certain municipalities and the incorporation of new municipalities within such extraterritorial jurisdiction; and the extension of certain ordinances to areas of extraterritorial jurisdiction.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 3187** as follows:

(1) Add the following language to the end of Subsection (d) of SECTION 7:

"The village may enter into intergovernmental agreements with municipal utility districts or other governmental entities for the provision of water or sewer service. Upon entering into such an agreement with any municipal utility district which is partially within the extraterritorial jurisdiction of the village, the balance of the municipal utility district shall be brought into the extraterritorial jurisdiction of the village upon adoption of a resolution specifying such boundary."

(2) Add the following new Subsections (g), (h), and (i) to SECTION 7:

"(g) The boundaries of West Travis County Municipal Utility District No. 3 created by S.B. 1646 enacted during the Regular Session of the 71st Legislature include the territory contained within the following area:

DESCRIPTION, based on record information, of a tract or parcel of land containing 206.033 acres situated in the Joseph Rohmuller Survey No. 642, the Fred Seifert Survey No. 656, the C.T. & M.C. Railroad Company Survey No. 75, and the E. C. Gaines Survey No. 76, all in Travis County, Texas, being a portion of that certain 1176.439 acre tract of land described as tract one in a warranty deed conveyed to Bohl's Cattle Ranch and Investment Venture, recorded in Volume 9948, Page 458, of the Deed Records of Travis County, Texas; said 206.033 acres being more particularly described as follows:

BEGINNING at a point in the northerly right-of-way line of FM 2244 (100' R.O.W.), being the most southerly southwest corner of the said 1176.439 acre tract and of the herein described tract, same being the southeast corner of that certain 33.052 acre tract of land conveyed by deed to Henry Lamar Cato & Carole Cato Erwing as recorded in Volume 9102, Page 845 of the said deed records, also being the southwest corner of that certain 146.441 acre tract of land described as Tract Two in a general warranty deed conveyed to John S. Lloyd, Trustee, recorded in Volume 8064, Page 516 of the said deed records;

THENCE, N 39° 41' 12" W, leaving the said northerly right-of-way line of FM 2244 (100' R.O.W.) and along the common line between the said 1176.439 acre tract, the said 33.052 and the said 146.441 acre tract, for a distance of 1824.39 feet to a point for the northeast corner of the said 33.052 acre tract;

THENCE, along the perimeter of the said 146.441 acre tract and continuing across the said 1176.439 acre tract for the following four (4) courses:

1) N 39° 28' 04" W, for a distance of 242.75 feet to a point for the northwest corner of the said 146.441 acre tract;

2) N 48° 51' 48" E, for a distance of 1861.77 feet to a point for the most northerly corner of the said 146.441 acre tract;

3) S 45° 47' 51" E, for a distance of 2079.22 feet to a point for a corner;

4) N 49° 52' 52" E, for a distance of 863.25 feet to a point for the most easterly northeast corner of the said 146.441 acre tract;

THENCE, N 53° 31' 56" E, leaving the east line of the said 146.441 acre tract and continuing across the said 1176.439 acre tract, for a distance of 54.84 feet to a point for the most westerly corner of that certain 106.652 acre tract of land described as Tract One in a general warranty deed conveyed to John S. Lloyd, Trustee, recorded in Volume 8064, Page 516 of the said deed records;

THENCE, along the north line of the said 106.652 acre tract and continuing across the said 1176.439 acre tract for the following twelve (12) courses:

1) N 53° 04' 08" E, for a distance of 502.26 feet to an angle point;

2) N 55° 35' 08" E, for a distance of 165.75 feet to an angle point;

3) S 27° 01' 51" E, for a distance of 178.28 feet to an angle point;

4) S 22° 54' 20" E, for a distance of 187.59 feet to an angle point;

5) S 33° 01' 24" E, for a distance of 230.56 feet to an angle point;
 6) N 89° 37' 56" E, for a distance of 81.20 feet to an angle point;
 7) N 04° 46' 39" E, for a distance of 111.94 feet to an angle point;
 8) N 19° 31' 24" W, for a distance of 135.94 feet to an angle point;
 9) N 10° 26' 56" W, for a distance of 328.21 feet to an angle point;
 10) N 02° 22' 44" E, for a distance of 150.92 feet to an angle point;
 11) N 52° 17' 30" E, for a distance of 588.90 feet to an angle point;
 12) N 53° 03' 58" E, for a distance of 91.11 feet to a point for the most easterly northeast corner of the herein described tract;

THENCE, S 22° 31' 30" E, leaving the north line of the said 106.652 acre tract and continuing across the said 1176.439 acre tract, for a distance of 2103.31 feet to a point in the aforesaid northerly right-of-way line of R.M. 2244 (100' right-of-way), being in the south line of both the said 1176.439 acre tract and the said 106.652 acre tract;

THENCE, along the south line of the said 1176.439 acre tract being the northerly right-of-way line of R.M. 2244 for the following eight (8) courses:

1) S 67° 28' 30" W, for a distance of 471.78 feet to an angle point;
 2) S 67° 34' 20" W, for a distance of 550.76 feet to a point for the most southerly corner of the 106.652 acre tract;
 3) S 67° 35' 46" W, passing at a distance of 116.68 feet the most easterly corner of the said 146.441 acre tract, for a total distance of 390.62 feet to the point of curvature of a curve to the right;
 4) with the said curve to the right having a central angle of 30° 20' 09", a radius of 1385.52 feet, a chord of 725.04 feet (chord bears S 82° 46' 07" W) for an arc distance of 733.57 feet to a point of tangency;
 5) N 82° 04' 02" W, 682.55 feet to the point of curvature of a curve to the left;
 6) with the said curve to the left having a central angle of 26° 37' 11", a radius of 1483.99 feet, a chord of 683.28 feet (chord bears S 84° 37' 23" W) for an arc distance of 689.46 feet to the point of tangency;
 7) S 71° 18' 47" W, 630.15 feet to the point of curvature of a curve to the left;
 8) with the said curve to the left having a central angle of 13° 59' 13", a radius of 1980.69 feet, a chord of 482.32 feet (chord bears S 64° 19' 11" W) for an arc distance of 483.52 feet to the POINT OF BEGINNING, CONTAINING 206.033 acres of land area.

(h) The boundaries of West Travis County Municipal Utility District No. 4 created by S.B. 1647 enacted during the Regular Session of the 71st Legislature include the territory contained within the following area:

DESCRIPTION, based on record information, of a tract or parcel of land containing 595.190 acres situated in the H. T. & B. Railroad Company Survey No. 1, the W. P. Moore Survey No. 525, and the H.C. Bohls Survey No. 1 and the James Swisher Survey No. 152, all in Travis County Texas, same being a portion of that certain 1176.439 acre tract of land described as tract one in a warranty deed conveyed to Bohl's Cattle Ranch and Investment Venture, recorded in Volume 9948, Page 458, of the Deed Records of Travis County, Texas; said 595.190 acres being more particularly described as follows:

BEGINNING at a point in the south water's edge of Lake Austin, being the northwest corner of the said 1176.439 acre tract, same being the northeast corner of that certain 780.668 acre tract of land conveyed by deed to Bishop John McCarthy as recorded in Volume 9601, Page 691 of the Deed Records of Travis County Texas, being the northwest corner of the herein described tract;

THENCE, with the meanders of the south water's edge of Lake Austin, being the north line of the said 1176.439 acre tract, the following seven (7) courses:

(1) S 48° 48' 50" E, for a distance of 286.83 feet to an angle point;
 (2) S 54° 29' 44" E, for a distance of 722.50 feet to an angle point;

(3) S 64° 20' 18" E, for a distance of 600.19 feet to an angle point;
(4) S 71° 19' 03" E, for a distance of 727.59 feet to an angle point;
(5) S 77° 11' 06" E, for a distance of 484.30 feet to an angle point;
(6) S 83° 33' 28" E, for a distance of 598.61 feet to an angle point;
(7) N 83° 20' 20" E, for a distance of 329.93 feet to a point for the northeast corner hereof;

THENCE, leaving the south water's edge of Lake Austin, also leaving the north line of and crossing through the said 1176.439 acre tract the following eleven (11) courses:

(1) S 28° 57' 46" W, for a distance of 950.99 feet to an angle point;
(2) S 08° 31' 00" W, for a distance of 599.55 feet to an angle point;
(3) S 14° 16' 09" E, for a distance of 647.42 feet to an angle point;
(4) S 05° 07' 17" E, for a distance of 415.08 feet to an angle point;
(5) S 40° 57' 46" W, for a distance of 207.38 feet to an angle point;
(6) S 24° 39' 22" W, for a distance of 157.25 feet to an angle point;
(7) S 10° 44' 18" W, for a distance of 274.69 feet to an angle point;
(8) S 04° 45' 48" E, for a distance of 328.95 feet to an angle point;
(9) S 35° 34' 21" E, for a distance of 182.61 feet to an angle point;
(10) S 27° 59' 56" W, for a distance of 444.07 feet to an angle point;
(11) S 68° 28' 12" E, for a distance of 565.24 feet to a point in the north line of that certain 106.652 acre tract of land being described as Tract One in a general warranty deed conveyed to John S. Lloyd, recorded in Volume 8064, Page 516 of the said deed records;

THENCE, along the north line of the said 106.552 acre tract and continuing across the said 1176.439 acre tract for the following two (2) courses:

(1) S 55° 35' 08" W, for a distance of 165.75 feet to an angle point;
(2) S 53° 04' 08" W, for a distance of 502.26 feet to a point for the most westerly corner of the said 106.652 acre tract;

THENCE, S 53° 31' 56" W, leaving the west line of the said 106.652 acre tract and continuing across the said 1176.439 acre tract, for a distance of 54.84 feet to a point for the most easterly northeast corner of that certain 146.441 acre tract of land being described as Tract Two in a general warranty deed conveyed to John S. Lloyd, recorded in Volume 8064, Page 516 of the said deed records;

THENCE, along the northerly line of the the said 146.441 acre tract and continuing across the said 1176.439 acre tract, for the following four (4) courses:

(1) S 49° 52' 52" W, for a distance of 863.25 feet to a point for a corner;
(2) N 45° 47' 51" W, for a distance of 2079.22 feet to a point for the most northerly northeast corner of the said 146.441 acre tract;
(3) S 48° 51' 48" W, for a distance of 1861.77 feet to a point for the northwest corner of the said 146.441 acre tract;

(4) S 39° 28' 04" E, for a distance of 242.75 feet to a point for the northeast corner of that certain 33.052 acre tract being described as Tract Two in a deed conveyed to Henry Lamar Cato and Carole Cato Erwing, recorded in Volume 9102, Page 845 of the said deed records, same being a corner in the southerly line of the said 1176.439 acre tract;

THENCE, along the common line between the said 1176.439 acre tract and the 33.052 acre tract, for the following two (2) courses:

(1) S 88° 49' 22" W, for a distance of 749.46 feet to a point for the northwest corner of the said 33.052 acre tract;

(2) S 08° 48' 59" E, for a distance of 375.76 feet to a point in the west line of said 33.052 acre tract, same being the northeast corner of that certain 66.47 acre tract of land described as Tract Two in a deed conveyed to Robert B. Baldwin as recorded in Volume 8982, Page 776 of the Deed Records of Travis County, Texas;

THENCE, N 68° 41' 00" W, leaving the west line of the said 33.052 acre tract, with the common line between the said 1176.439 acre tract and the said 66.47 acre tract passing at a distance of 1569.97 feet, the northwest corner of the said 66.47 acre tract, same being the northeast corner of that certain 36.00 acre tract of land described as Tract One in a deed conveyed to Robert B. Baldwin as recorded in Volume 8982, Page 776 of the Deed Records of Travis County, Texas, for a total distance of 2639.52 feet to a point for the most westerly southwest corner of the said 1176.439 acre tract and the herein described tract, same being the northwest corner of the said 36.00 acre tract, and a point in the east line of that certain 1.00 acre tract of land as conveyed by deed to Robert B. Baldwin, recorded in Volume 9208, Page 564 of the Deed Records of Travis County, Texas;

THENCE, N 14° 21' 18" E, with the most westerly line of the said 1176.439 acre tract and the east line of the said 1.00 acre tract, for a distance of 117.58 feet to a point for the northeast corner of the said 1.00 acre tract, same being the southeast corner of that certain 2.37 acre tract of land conveyed by deed to Horace B. Webb as recorded in Volume 7303, Page 557 of the Deed Records of Travis County, Texas;

THENCE, N 14° 01' 34" E, with the east line of the said 1.06 acre tract and the most westerly line of the said 1176.439 acre tract, for a distance of 209.62 feet to a point for the northeast corner of the said 1.06 acre tract, same being the southeast corner of that certain 2.37 acre tract of land as conveyed by deed to Robert B. Baldwin, recorded in Volume 7972, Page 47 of the Deed Records of Travis County, Texas;

THENCE, N 14° 01' 05" E, with the east line of the said 2.37 acre tract and the most westerly line of the said 1176.439 acre tract, for a distance of 490.05 feet to a point for the northeast corner of the said 2.37 acre tract, same being the most southerly southeast corner of that certain 780.668 acre tract of land conveyed by deed to Bishop John McCarthey as recorded in Volume 9601, Page 691 of the Deed Records of Travis County, Texas;

THENCE, with the common line between the said 1176.439 acre tract and the said 780.668 acre tract the following three (3) courses:

(1) N 14° 04' 59" E, for a distance of 274.33 feet to a point for an ell corner;
(2) S 75° 18' 20" E, for a distance of 826.26 feet to a point for the most easterly southeast corner of the said 780.668 acre tract;

(3) N 29° 48' 38" E, for a distance of 5616.98 feet to the POINT OF BEGINNING, CONTAINING 595.190 acres of land area, save and except that area lying below the 504.90 foot elevation contour, being the limits of full purpose annexation for the City of Austin.

(i) The boundaries of West Travis County Municipal Utility District No. 5 created by S.B. 1648 enacted during the Regular Session of the 71st Legislature include the territory contained within the following area:

DESCRIPTION, based on record information, of a tract or parcel of land containing 375.204 acres situated in the H.T. & B. Railroad Company Survey No. 1, the E.C. Gaines Survey No. 76, and the H.C. Bohl's Survey No. 1, all in Travis County, Texas, same being a portion of that certain 1176.439 acre tract of land described as tract one in a warranty deed conveyed by a warranty deed to Bohl's Cattle Ranch and Investment Venture, recorded in Volume 9948, Page 458, of the Deed Records of Travis County, Texas; said 375.204 acres being more particularly described as follows:

BEGINNING at a point for the southwest corner of the certain 724.68 acre tract as conveyed to Dorothy Geisman Baldwin recorded in Volume 5185, Page 1678 of the Deed Records of Travis County, Texas, same being an ell corner on the easterly line of the said 1176.439 acre tract, and that 106.652 acre tract described as tract one in a deed to John S. Lloyd recorded in Volume 8064, Page 516 of the said deed records;

THENCE, with the common line between the said 724.68 acre tract and the said 1176.439 acre tract the following three (3) courses;

- (1) S 60° 09' 16" E, for a distance of 271.49 feet to an angle point;
- (2) S 60° 37' 56" E, for a distance of 503.21 feet to an angle point;
- (3) S 59° 51' 25" E, for a distance of 390.73 feet to the most easterly southeast corner of the said 1176.439 acre tract being the most easterly southeast corner of the said 106.652 acre tract and the herein described tract, same being the most northerly corner of that certain 6.686 acre tract of land as conveyed by deed to Wiley Johnson recorded in Volume 775, Page 455, of the Deed Records of Travis County, Texas;

THENCE, S 46° 29' 04" W, leaving the south line of the said 724.68 acre tract, with the common line between the said 1176.439 acre tract and the said 6.686 acre tract, 272.67 feet to a point;

THENCE, S 46° 02' 06" W, for a distance of 793.89 feet to a point in the northerly right-of-way line of R.M. 2244 (100' ROW);

THENCE, S 67° 28' 30" W, with the northerly right-of-way line of said R.M. 2244, being the southerly line of the said 1176.439 acre tract, for a distance of 163.13 feet to a point for the most southerly southwest corner of the herein described tract;

THENCE, N 22° 31' 30" W, leaving the northerly right-of-way line of R.M. 2244 being the southerly line of the 106.652 acre tract and continuing across the said 1176.439 acre tract, for a distance of 2103.31 feet to a point in the north line of the said 106.652 acre tract;

THENCE, along the north line of the said 106.652 acre tract and continuing across the said 1176.439 acre tract for the following ten (10) courses:

- (1) S 53° 03' 58" W, for a distance of 91.11 feet to an angle point
- (2) S 52° 17' 30" W, for a distance of 588.90 feet to an angle point;
- (3) S 02° 22' 44" W, for a distance of 150.92 feet to an angle point;
- (4) S 10° 26' 56" E, for a distance of 328.21 feet to an angle point;
- (5) S 19° 31' 24" E, for a distance of 135.94 feet to an angle point;
- (6) S 04° 46' 39" E, for a distance of 111.94 feet to an angle point;
- (7) S 89° 37' 56" W, for a distance of 81.20 feet to an angle point;
- (8) N 33° 01' 24" W, for a distance of 230.56 feet to an angle point;
- (9) N 22° 54' 20" W, for a distance of 187.59 feet to an angle point;
- (10) N 27° 01' 51" W, for a distance of 178.28 feet to an angle point;

THENCE, leaving the north line of the said 106.652 acre tract and continuing across the said 1176.439 acre tract, for the following eleven (11) courses:

- (1) N 68° 28' 12" W, for a distance of 565.24 feet to an angle point;
- (2) N 27° 59' 56" E, for a distance of 444.07 feet to an angle point;
- (3) N 35° 34' 21" W, for a distance of 182.61 feet to an angle point;
- (4) N 04° 45' 48" W, for a distance of 328.95 feet to an angle point;
- (5) N 10° 44' 18" E, for a distance of 274.69 feet to an angle point;
- (6) N 24° 39' 22" E, for a distance of 157.25 feet to an angle point;
- (7) N 40° 57' 46" E, for a distance of 207.38 feet to an angle point;
- (8) N 05° 07' 17" W, for a distance of 415.08 feet to an angle point;
- (9) N 14° 16' 09" W, for a distance of 647.42 feet to an angle point;
- (10) N 08° 31' 00" E, for a distance of 599.55 feet to an angle point;
- (11) N 28° 57' 46" E, for a distance of 950.99 feet to an angle point in the south water's edge of Lake Austin, being a point in the north line of the said 1176.439 acre tract;

THENCE, with the meanders of the south water's edge of Lake Austin being the north line of the said 1176.439 acre tract, the following six (6) courses:

- (1) N 83° 20' 02" E, for a distance of 234.20 feet to an angle point;

(2) N 72° 07' 42" E, for a distance of 532.54 feet to an angle point;
 (3) N 67° 48' 13" E, for a distance of 797.22 feet to an angle point;
 (4) N 62° 27' 05" E, for a distance of 910.27 feet to an angle point;
 (5) N 57° 55' 00" E, for a distance of 832.41 feet to an angle point;
 (6) N 59° 34' 22" E, for a distance of 1069.49 feet to a point in the centerline of Sycamore Creek for the northeast corner of the said 1176.439 acre tract and the herein described tract, same being the northwest corner of the afore said 724.68 acre tract;

THENCE, leaving the south water's edge of Lake Austin, with the centerline of said Sycamore Creek, said centerline being the boundary line agreement between the said 1176.439 acre tract and the said 724.68 acre tract as recorded in Volume 8064, Page 601 of the Deed Records of Travis County, Texas, for the following nine (9) courses:

(1) S 27° 49' 23" E, for a distance of 114.41 feet to an angle point;
 (2) S 10° 53' 09" W, for a distance of 102.60 feet to an angle point;
 (3) S 34° 06' 11" E, for a distance of 49.21 feet to an angle point;
 (4) S 17° 10' 45" E, for a distance of 244.78 feet to an angle point;
 (5) S 28° 24' 33" E, for a distance of 82.43 feet to an angle point;
 (6) S 13° 16' 51" E, for a distance of 63.23 feet to an angle point;
 (7) S 31° 13' 54" E, for a distance of 176.34 feet to an angle point;
 (8) S 25° 44' 34" E, for a distance of 74.98 feet to an angle point;
 (9) S 16° 02' 53" E, for a distance of 119.83 feet to a point for the most easterly corner of the said 1176.439 acre tract and the said herein described tract;

THENCE, continuing with a common line between the said 1176.439 acre tract and the said 724.68 acre tract, the following nine (9) courses:

(1) S 30° 14' 02" W, for a distance of 3564.95 feet to an angle point; being the most easterly corner of the said 106.652 acre tract;
 (2) S 27° 21' 22" W, for a distance of 31.88 feet to an angle point;
 (3) S 29° 49' 44" W, for a distance of 235.44 feet to an angle point;
 (4) S 29° 17' 15" W, for a distance of 151.41 feet to an angle point;
 (5) S 29° 24' 22" W, for a distance of 132.76 feet to an angle point;
 (6) S 29° 54' 13" W, for a distance of 195.09 feet to an angle point;
 (7) S 29° 51' 58" W, for a distance of 956.09 feet to an angle point;
 (8) S 30° 18' 24" W, for a distance of 324.98 feet to an angle point;
 (9) S 29° 09' 55" W, for a distance of 210.85 feet to the POINT OF BEGINNING, CONTAINING 375.204 acres of land area, save and except that area lying below the 504.90 foot elevation contour, being the limits of full purpose annexation for the City of Austin."

(3) Amend C.S.H.B. 3187 by adding the following new SECTION 10 and renumbering the remaining sections accordingly:

"SECTION 10. Should the provisions of this Act pertaining to extraterritorial jurisdiction or municipal utility districts be held unconstitutional for any reason, such invalidity shall not effect the validity of the districts and to that end the provisions of this Act are severable."

The amendment was read and was adopted viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 3187 by adding the following before the period at the end of SECTION 3, subsection (c):

, unless the land owner requests in writing to not be annexed for full purposes by the municipality. A written request by the landowner to not be annexed for full

purposes by the municipality under this subsection is binding on the municipality, unless otherwise agreed to by the landowner and the municipality, until August 1, 1992

The amendment was read and was adopted viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

(President in Chair)

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 338 ADOPTED**

Senator Caperton called from the President's table the Conference Committee Report on S.B. 338. (The Conference Committee Report having been filed with the Senate and read on Saturday, May 20, 1989.)

On motion of Senator Caperton, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 78, Requesting the Department of Mental Health and Mental Retardation to take certain steps regarding the community placement appeals process.

S.C.R. 83, Requesting the Texas Department of Health to review the feasibility of adopting rules to regulate imported municipal solid waste from other states.

S.C.R. 100, Directing the Department of Mental Health and Mental Retardation to conduct an analysis of community based program funding in other states.

S.C.R. 106, Creating an interim task force to study methods of funding the "State Superfund" project.

S.C.R. 126, Requesting the U.S. Postal Service to issue a commemorative postage stamp honoring the 50th anniversary of Cal Farley's Boys Ranch.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

**MOTION TO PLACE COMMITTEE SUBSTITUTE
HOUSE BILL 504 ON SECOND READING**

Senator Brown moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 504, Relating to the sale of certain mixtures of gasoline and alcohol; providing penalties.

POINT OF ORDER

Senator Krier raised a point of order that the substitute for **H.B. 504** was not germane.

On motion of Senator Brown and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

**VOTE ON FINAL PASSAGE OF
COMMITTEE SUBSTITUTE HOUSE BILL 2033 RECONSIDERED**

On motion of Senator Henderson and by unanimous consent, the vote by which **C.S.H.B. 2033** was finally passed was reconsidered.

Question - Shall **C.S.H.B. 2033** be finally passed?

Senator Henderson offered the following amendment to the bill:

Amend **C.S.H.B. 2033**, page 23, line 6 by inserting the following after the word "officers,":

"or special election ordered by the Governor,"

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1023 ON THIRD READING**

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.H.B. 1023, Relating to taxes on the occupancy of a hotel, motel, or similar establishment.

The bill was read third time.

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 6

Amend **C.S.H.B. 1023** as follows:

(1) In proposed Section 351.101(d), Tax Code (page 3, line 4, Senate Committee Report), strike "25 members" and substitute "54 members".

(2) In proposed Section 352.101(c), Tax Code (page 6, line 51, Senate Committee Report), strike "25 members" and substitute "54 members".

By unanimous consent, the amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 7

Amend **C.S.H.B. 1023**, SECTION 7 by adding a new subsection (e) to read as follows:

(e) This section does not apply to a municipality having a population of 125,000 or less. This subsection only authorizes a municipality to use hotel occupancy tax revenue for purposes authorized by Section 351.101.

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Leedom, and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed viva voce vote.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 222**

Senator Caperton submitted the following Conference Committee Report:

Austin, Texas
May 25, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 222 (General Appropriations Bill) have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CAPERTON

BROOKS

McFARLAND

MONTFORD

PARKER

On the part of the Senate

RUDD

GARCIA

C. HARRIS

PERRY

WILLIAMSON

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

On motion of Senator Caperton and by unanimous consent, the Conference Committee Report was ordered not printed in the Senate Journal.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1954 ON SECOND READING**

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1954, Relating to a premium tax imposed on certain life, accident, and health insurers and the imposition of a retaliatory tax.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **C.S.H.B. 1954** by striking all below the enacting clause and substituting the following:

SECTION 1. Article 4.11, Insurance Code, is amended by amending Sections 4, 5, and 5A and adding Sections 5B through 5H to read as follows:

Sec. 4. ALLOCATION OF INVESTMENTS. (a) For the purposes of this article, Texas investments and similar investments of comparison states are to be attributed as follows:

(1) bonds and other obligations of the United States are to be allocated proportionately to each state in the same ratio as its gross direct premium income is received from each state;

(2) mortgage loans are to be allocated to the state in which the real property securing the loan is located;

(3) bonds and other obligations of governmental units are to be allocated to the state in which such units are located;

(4) corporate stocks, bonds, or other obligations are to be allocated to the state of domicile of such corporation;

(5) deposits, loans to, or investments in any bank, savings and loan, or other financial institution shall be allocated to the state in which such institution is located; the amount of "demand deposits" in such institution for the purposes of this article shall be the average of each of the 12 months' ending balances as determined from the carrier's books and records;

(6) policy loans shall be allocated to the policy address of the policyholder;

(7) collateral loans shall be allocated to the state of address of the borrower; and

(8) real property, or any interest therein, shall be allocated to the state in which it is located.

(b) The value of loans under Subsections (a)(2), (6), and (7) of this section is determined by dividing the sum of the unpaid principal balance of those loans as shown on the books of the insurance carrier at the close of each calendar quarter by four.

(c) The value of stocks, bonds, and other obligations of governmental units and corporations under Subsections (a)(1), (3), and (4) of this section is determined by dividing the sum of the amortized value of those investments as shown on the books of the insurance carrier at the close of each calendar quarter by four.

(d) The value of real property and any interest in real property under Subsection (a)(8) of this section is determined by dividing the sum of the value of that real estate and other interests in real property as shown on the books of the insurance carrier at the close of each calendar quarter by four.

Sec. 5. TAX RATE—1989. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Section 5H of this article, for the 1989 tax year and tax years preceding the 1989 tax year, there [There] is imposed on each insurance carrier an annual tax equal to 2.5 percent of its gross premiums. Any insurance carrier may qualify for a tax rate lower than the 2.5 percent imposed by this article. Such qualification for a lower rate can be accomplished in the following manner:

(1) if such insurance carrier for the year ending [as of] December 31 preceding owned Texas investments with admitted asset value of less than or equal to 100 percent but more than or equal to 90 percent of similar investments such insurance carrier owned in the comparison state as herein defined, the tax imposed shall be equal to 1.8 percent of its gross premiums; or

(2) if such insurance carrier for the year ending [as of] December 31 preceding owned Texas investments with admitted asset value of more than 100 percent of the amount such insurance carrier owned in the comparison state in

similar investments as herein defined, the tax imposed shall be equal to 1.10 percent of its gross premiums.

(b) Except for gross revenues taxed under Section 5H of this article, for the tax years specified by Subsection (a) of this section, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax on its gross amount of revenues collected for issuance of health maintenance certificates or contracts at the rate provided by Subsection (a)(2) of this section. [; and

[(3) any such insurance carriers whose total gross premium receipts, without any deductions whatsoever, are less than \$450,000 for the preceding year ending December 31, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax equal to one-half of the tax rate indicated above as determined by its Texas investments compared to such similar investments in its comparison state.]

Sec. 5A. TAX RATE—1990. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Article 5H of this article, for the 1990 tax year, there is imposed on each insurance carrier an annual tax equal to 2.4 percent of its gross premiums. Any insurance carrier may qualify for a tax rate lower than the 2.4 percent imposed by this article. Such qualification for a lower rate can be accomplished in the following manner:

(1) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of less than or equal to 100 percent but more than or equal to 90 percent of similar investments such insurance carrier owned in the comparison state as herein defined, the tax imposed shall be equal to 1.85 percent of its gross premiums; or

(2) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of more than 100 percent of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.3 percent of its gross premiums.

(b) Except for gross revenues taxed under Section 5H of this article, for the tax year specified by Subsection (a) of this section, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax on its gross amount of revenues collected for issuance of health maintenance certificates or contracts at the rate provided by Subsection (a)(2) of this section.

[SURTAX. (a) Except as provided by Subsection (c) of this section, there is imposed on each insurance carrier subject to the tax imposed by this article a surtax at a rate equal to 20 percent of the tax rate applicable to that insurance carrier in each tax year as specified by this article:

[(b) Except as provided by Subsection (c) of this section, the surtax is imposed, collected, and allocated in the same manner and at the same times (including prepayments) as the tax imposed by this article:

[(c) The surtax imposed by this section does not apply to the portion of any gross premiums collected by an insurance carrier for any type of health or accident, health and accident, or accident and health insurance coverage:

[(d) This section expires January 1, 1989.]

Sec. 5B. TAX RATE—1991. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Section 5H of this article, for the 1991 tax year, there is imposed on each insurance carrier an annual tax equal to 2.3 percent of its gross premiums. Any insurance carrier may qualify

for a tax rate lower than the 2.3 percent imposed by this article. Such qualification for a lower rate can be accomplished in the following manner:

(1) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of less than or equal to 100 percent but more than or equal to 90 percent of similar investments such insurance carrier owned in the comparison state as herein defined, the tax imposed shall be equal to 1.85 percent of its gross premiums; or

(2) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of more than 100 percent of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.4 percent of its gross premiums.

(b) Except for gross revenues taxed under Section 5H of this article, for the tax year specified by Subsection (a) of this section, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax on its gross amount of revenues collected for issuance of health maintenance certificates or contracts at the rate provided by Subsection (a)(2) of this section.

Sec. 5C. TAX RATE—1992. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Section 5H of this article, for the 1992 tax year, there is imposed on each insurance carrier an annual tax equal to 2.2 percent of its gross premiums. Any insurance carrier may qualify for a tax rate lower than the 2.2 percent imposed by this article. Such qualification for a lower rate can be accomplished in the following manner:

(1) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of less than or equal to 100 percent but more than or equal to 90 percent of similar investments such insurance carrier owned in the comparison state as herein defined, the tax imposed shall be equal to 1.85 percent of its gross premiums; or

(2) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of more than 100 percent of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.5 percent of its gross premiums.

(b) Except for gross revenues taxed under Section 5H of this article, for the tax year specified by Subsection (a) of this section, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax on its gross amount of revenues collected for issuance of health maintenance certificates or contracts at the rate provided by Subsection (a)(2) of this section.

Sec. 5D. TAX RATE—1993. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Section 5H of this article, for the 1993 tax year, there is imposed on each insurance carrier an annual tax equal to 2.1 percent of its gross premiums. Any insurance carrier may qualify for a tax rate lower than the 2.1 percent imposed by this article. Such qualification for a lower rate can be accomplished in the following manner:

(1) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of less than or equal to 100 percent but more than or equal to 90 percent of similar investments such insurance carrier owned in the comparison state as herein defined, the tax imposed shall be equal to 1.85 percent of its gross premiums; or

(2) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of more than 100

percent of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.6 percent of its gross premiums.

(b) Except for gross revenues taxed under Section 5H of this article, for the tax year specified by Subsection (a) of this section, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax on its gross amount of revenues collected for issuance of health maintenance certificates or contracts at the rate provided by Subsection (a)(2) of this section.

Sec. 5E. TAX RATE—1994. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Section 5H of this article, for the 1994 tax year, there is imposed on each insurance carrier an annual tax equal to 2.0 percent of its gross premiums. Any insurance carrier may qualify for a tax rate lower than the 2.0 percent imposed by this article. Such qualification for a lower rate can be accomplished in the following manner:

(1) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of less than or equal to 100 percent but more than or equal to 90 percent of similar investments such insurance carrier owned in the comparison state as herein defined, the tax imposed shall be equal to 1.85 percent of its gross premiums; or

(2) if such insurance carrier for the year ending December 31 preceding owned Texas investments with admitted asset value of more than 100 percent of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.7 percent of its gross premiums.

(b) Except for gross revenues taxed under Section 5H of this article, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax on its gross amount of revenues collected for issuance of health maintenance certificates or contracts at the rate provided by Subsection (a)(2) of this section.

Sec. 5F. TAX RATE—1995 AND AFTERWARDS. (a) Except for gross premiums on life insurance taxed under Section 5G of this article and gross revenues of health maintenance organizations taxed under Subsection (b) of this section and Section 5H of this article, beginning with tax year 1995, there is imposed on each insurance carrier an annual tax equal to 1.75 percent of its gross premiums.

(b) Beginning with tax year 1995, there is imposed on each health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) an annual tax equal to 1.75 percent of its gross amount of its revenues collected for issuance of health maintenance certificates or contracts.

Sec. 5G. TAX RATE ON CERTAIN LIFE INSURANCE. There is imposed on each insurance carrier a tax on the first \$450,000 of its gross premiums on life insurance at a rate equal to one-half of the rate paid by that insurance carrier under Section 5, 5A, 5B, 5C, 5D, 5E, or 5F of this article, as appropriate, for the same tax year.

Sec. 5H. TAX RATE ON CERTAIN GROSS REVENUES OF HEALTH MAINTENANCE ORGANIZATIONS. There is imposed on each health maintenance organization a tax on the first \$450,000 of its gross amount of revenues collected for issuance of health maintenance certificates or contracts at a rate equal to one-half of the rate paid by that health maintenance organization under Section 5, 5A, 5B, 5C, 5D, 5E, or 5F of this article, as appropriate, for the same tax year.

SECTION 2. Section 33(a), Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code), is amended to read as follows:

(a) Each health maintenance organization shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such health maintenance organization shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts at the rate provided by [in accordance with] Article 4.11, Insurance Code, as amended. For the purposes of computing and collecting the tax herein provided, a health maintenance organization is an "insurance organization" within the terms of Article 4.11, Insurance Code, as amended.

SECTION 3. Article 21.46, Insurance Code, is amended to read as follows:

Art. 21.46. RETALIATORY PROVISIONS; PAYMENT OF TAXES, FINES, PENALTIES, ETC.; CONDITION PRECEDENT TO DOING BUSINESS IN STATE; EXEMPTIONS. Whenever by the laws of any other state or territory of the United States any taxes, including income and corporate franchise, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions are imposed upon any insurance company organized in this State and licensed and actually doing business in such other state or territory which, in the aggregate are in excess of the aggregate of the taxes, including income and corporate franchise, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon a similar insurance company of such other state or territory doing business in this State, the State Board of Insurance shall impose upon any similar company of such state or territory in the same manner and for the same purpose, the same taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions; provided, however, the aggregate of taxes, licenses, fees, fines, penalties or other obligations imposed by this State pursuant to this Article on an insurance company of another state or territory shall not exceed the aggregate of such charges imposed by such other state or territory on a similar insurance company of this State actually licensed and doing business therein; provided, further, that wherever under any law of this State the basic rate of taxation of any insurance company of another state or territory is reduced if any such insurance company has made investments in Texas securities then in computing the aggregate Texas premium tax burdens of any such insurance company of any other state or territory each shall for purposes of comparison with the premium tax laws of its home state be considered to have assumed and paid an aggregate premium tax burden equal to the basic rate; provided, further, that for the purpose of this Section, an alien insurer shall be deemed a company of the State designated by it wherein it has

(a) established its principal office or agency in the United States, or

(b) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or

(c) in which it was admitted to do business in the United States.

Licenses and fees collected by the State Board of Insurance under this Article shall be deposited in the State Treasury to the credit of the general revenue fund [State Board of Insurance operating fund].

The provisions of this Section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

The provisions of this Act shall not apply to a company of any other state doing business in this State if fifteen per cent (15%) or more of the voting stock of said company is owned by a corporation organized under the laws of this State, and domiciled in this State; however, the prior provisions of this Act shall apply without exception to any and all person or persons, company or companies, firm or firms,

association or associations, group or groups, corporation or corporations, or any insurance organization or organizations of any kind, which did not qualify as a matter of fact, under the exception of this paragraph, on or before January 29, 1957.

SECTION 4. (a) This Act applies to all premium taxes imposed under Article 4.11, Insurance Code, and all retaliatory taxes imposed under Article 21.46, Insurance Code, beginning January 1, 1989. Taxes imposed under those articles before January 1, 1989, are governed by the law that existed in the calendar year in which those taxes were imposed and that law is continued in effect for that purpose.

(b) For the tax year beginning January 1, 1989, the State Board of Insurance by order shall provide a reasonable method for adjusting and computing the prepayment of taxes for the remainder of the tax year that will to the extent possible provide for prepayment of taxes as provided by Article 4.11, Insurance Code.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1954 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1954** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2094 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2094, Relating to the information kept by the Texas Department of Public Safety regarding offenses involving family violence.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2094 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2094** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 2433 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2433, Relating to identification of bank facilities.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2433 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2433** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Carriker and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to House amendments to **S.B. 642**.

SENATE BILL 642 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 642** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment - Parker

Amend **S.B. 642** as follows:

On page 3, line 7, after "be", delete "notarized" and insert "verified".

Floor Amendment on Third Reading - Parker

Amend **S.B. 642** by renumbering Section 2 of the bill as Section 3 and by adding a new Section 2 to read as follows:

SECTION 2. Section 41.002(c), Property Code, is amended to read as follows:

(c) A homestead is considered to be rural if, at the time the designation is made, the property is not served by municipal utilities and fire and police protection.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

The amendments were read.

Senator Carriker moved to concur in the House amendments to **S.B. 642**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 879 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 879, Relating to the preparation of a social study in certain suits affecting the parent-child relationship.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Amend C.S.H.B. 879 by striking everything below the enacting clause and substituting the following:

SECTION 1. Section 11.03, Family Code is amended by adding subsection (i) to read as follows:

(i) The attorney general's office may bring any action authorized under Title 2 of this code in providing services authorized by Chapter 76, Human Resources Code. Subject to the provisions of that chapter, the attorney general's office shall have the same right as a party to an original action to seek modification or enforcement of a court order. The attorney general's office is a necessary party to any suit for establishment, modification or enforcement of support involving a child whose support rights have been assigned to the attorney general pursuant to Chapter 76, Human Resources Code.

SECTION 2. Section 13.01, Family Code, is amended to read as follows:

Sec. 13.01. PARTIES: TIME LIMITATION OF SUIT. (a) A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's biological father by proof of paternity may be brought by the mother, by a man claiming to be or possibly to be the father, or by any other person or governmental entity having standing to sue under Section 11.01 of this code. A suit to establish paternity may be brought before the birth of the child, but must be brought on or before the second anniversary of the day the child becomes an adult, or the suit is barred.

(b) The children to whom this section applies include a child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was in effect.

SECTION 3. Section 14.05, Family Code, is amended by adding Subsection (i) and (j) to read as follows:

(i) In any suit affecting the parent-child relationship, there is a rebuttable presumption that the amount of the amount of periodic child support payments established by the child support guidelines in effect in this state at the time of the hearing are reasonable and that an order of support conforming to those guidelines is in the best interest of the child.

(j) The child support guidelines in effect in this state shall be reviewed at least once every four years by the advisory committee appointed under Subsection (h) of this section.

SECTION 4. Subsection (b), Section 14.32, Family Code, is amended to read as follows:

(b) Court Reporter. ~~An[Except when entry of an order is agreed on by the parties, no] enforcement order under this subchapter may not [shall] be entered if [unless] a record of the proceedings is not made by a court reporter or as provided by Subchapter A, Chapter 54, Government Code, unless:~~

(1) the parties agree on entry of the order; or

(2) if the order seeks incarceration, the parties waive the requirement at the time of the hearing either in writing or in open court and with the approval of the court.

SECTION 5. Section 14.44, Family Code, is amended by adding Subsection (h) to read as follows:

(h) Interstate Requests for Income Withholding. In a proceeding initiated under Part D of Title IV of the federal Social Security Act, as amended (42 U.S.C.

Section 651 et seq.), the registration of a foreign support order pursuant to Chapter 21 of this code shall be a sufficient basis for the filing by the attorney general of a notice of delinquency under this section. Such notice shall be filed with the clerk of the court having venue under Chapter 21 of this code. Notice of delinquency as provided in this section may be delivered to the obligor at the same time that an order is filed for registration under Chapter 21 of this code.

SECTION 6. Section 76.002 Human Resources Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The attorney general may:

(1) accept, transfer, and expend funds, subject to the General Appropriations Act, made available by the federal or state government or by another public or private source for the purpose of carrying out this chapter;

(2) adopt rules for the provision of child support services;

(3) initiate administrative or legal actions needed to implement this chapter;

(4) enter into contracts or agreements necessary to administer this chapter; ~~and~~

(5) request agencies of the state and its political subdivisions to search their records to help locate absent parents~~[-]; and~~

(6) consistent with the requirements of the Family Code, create and implement administrative processes for the establishment and enforcement of child support and medical support obligations, for the establishment of paternity, for cooperating with other states to implement actions under the Uniform Reciprocal Enforcement of Support Act, as revised, or any other statute, for the review of child support amounts and for the resolution or mediation of complaints or disputes relating to child support or possession of or access to a child.

(e) The attorney general may seek modification of support amounts in any suit affecting the parent-child relationship.

SECTION 7. Subsection (a), Section 76.004, Human Resources Code, is amended to read as follows:

(a) The attorney general's office on request, or as otherwise authorized by law, may provide parent locator, child support ~~collection~~, or paternity determination services for the benefit of a child without regard to whether the child has received [available to a person other than an applicant for or a recipient of] financial assistance under Chapter 31 of this code. The office may charge a reasonable application fee and recover costs for the services provided. An application for child support services under this section shall operate as an assignment of support rights as provided by Section 76.003 of this code, but shall not constitute an assignment under Chapter 31 of this code or 45 C.F.R. Sec. 232.11, nor is such assignment a condition of eligibility for services.

SECTION 8. Section 76.007, Human Resources Code, is amended to read as follows:

76.007. ATTORNEYS REPRESENTING STATE. (a) Attorneys employed by the attorney general may represent the state or other states ~~[parties] in administrative or legal actions brought under [a suit to establish a child support obligation, collect child support, or determine paternity brought under the authority of federal law or] this chapter.~~

(b) The attorney general may contract with private attorneys or political subdivisions of the state to ~~provide services [represent parties] in legal actions [to establish child support obligations, to collect child support, or to determine paternity;] brought under the authority of federal law and this chapter.~~

(c) The attorney general shall provide copies of all contracts entered into under this section to the Legislative Budget Board and the Governor's Office of the Budget and Planning, along with a written justification of the need for each contract, within 60 days after the execution of the contract.

(d) An attorney employed by the attorney general or as otherwise provided under this Chapter shall not be appointed nor act as a guardian ad litem or attorney ad litem for a child or other party.

(e) The providing of services under this Chapter by the attorney general's office shall not authorize service on the attorney general's office of any legal notice required to be served on party.

SECTION 9. Subsection (a), Section 14, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 47a, Article 4477, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the Texas Department of Health. The form must include a space for recording the social security numbers of the mother and father, and the signature of the biological mother and biological father. Such social security numbers and signatures shall not be considered a part of the legal certificate of birth, shall be made available to the agency administering the state's plan under part D of title IV of the federal social security act, and shall not be used or disseminated for any purpose other than the establishment and enforcement of child support orders in effect in the State. The father of an illegitimate child may acknowledge paternity by signing the certificate of birth or in accordance with [executing an affidavit acknowledging paternity according to] the requirements of Section 13.22, Family Code. ~~[- The affidavit may be filed with the Texas Department of Health. If so filed, the affidavit shall be maintained with the original birth record, but shall not become a part thereof. Once filed, such affidavit becomes privileged, and shall be available only to a court of competent jurisdiction, in which a suit of paternity respecting the subject of the affidavit is pending, on motion of the trial judge].~~ Any person may apply to the Texas Department of Health to have any indication of illegitimacy removed from his or her birth record~~[- including separate medical records and the paternity affidavit].~~ The Department shall charge a fee of \$10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The items on the birth, death, or fetal death certificates of a child relating to the father of the child shall be completed to show the name and other related information about the father only if:

(1) the mother of the child was married to the father at the time of conception or birth of the child or at some point after birth; ~~or~~

(2) ~~if~~ the paternity of the child was established by a decree issued by a court of competent jurisdiction; ~~or~~

(3) the father signs the certificate of birth or otherwise acknowledges the child as his and consents in writing, on a form prescribed by the department, to be named as the father of the child on the certificate of birth. The Texas Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all births in connection with programs to notify the mothers of young children about health needs for the children.

SECTION 10. The following law is repealed:

Chapter 46, Human Resources Code.

SECTION 11. Section 11.12(b), Family Code, as amended by Chapters 744 and 1052, Acts of the 70th Legislature, Regular Session, 1987, is reenacted to read as follows:

(b) The social study may be made by any state agency, including the Texas Department of Human Services or any person appointed by the court. The court may appoint an investigator to conduct the social study required by this section who has the qualifications established by the rules of the Texas Department of Human

Services providing minimum qualifications for persons who may conduct social studies. If the Texas Department of Human Services, or another governmental agency, is appointed, the person who conducts the investigation and makes the report must also have those qualifications. A study made under this section must comply with the rules of the Texas Department of Human Services establishing minimum standards, guidelines, and procedures for social studies. In a suit in which adoption is sought or possession of or access to the child is an issue and in which the Texas Department of Human Services is not a party or has no interest, the court shall appoint a private agency or person to conduct the social study.

SECTION 12. Chapter 15, Family Code, is amended by adding Section 15.051 to read as follows:

Sec. 15.051. LOCATION OF CERTAIN PERSONS BEFORE APPOINTMENT OF AGENCY AS MANAGING CONSERVATOR. (a) In this section:

(1) "Federal parental locator service" means the service established under 42 U.S.C. Section 653.

(2) "Other parent" means a parent whose parent-child relationship with a child has not been terminated.

(3) "Relative" means a parent, grandparent, or adult sibling or child.

(b) A court that terminates a parent-child relationship may not appoint an authorized agency as managing conservator of the child unless the court determines that:

(1) the authorized agency has made a diligent effort to locate the other parent or a relative of the other parent; and

(2) either the other parent or a relative of the other parent is located by the agency has had a reasonable opportunity to request appointment as managing conservator of the child or the authorized agency is not able to locate the other parent or a relative of the other parent.

(c) If the authorized agency is not able to locate the other parent or a relative of the other parent, the court may not appoint the authorized agency as managing conservator of the child unless the court determines that:

(1) the state agency designated to administer a statewide plan for child support has requested the federal parent locator service for information relating to the location of the other parent or a relative of the other parent; and

(2) the other parent or a relative of the other parent located by the federal parent locator service has had a reasonable opportunity to request appointment as managing conservator of the child or the federal parent locator service is not able to locate the other parent or a relative of the other parent.

SECTION 13. Section 15.05(b), Family Code, is amended to read as follows:

(b) If the court terminates the parent-child relationship with respect to both parents or to the only living parent, the court shall appoint a suitable, competent adult or, except as provided by Section 15.051 of this code, an authorized agency as managing conservator of the child. An agency designated managing conservator in an unrevoked or irrevocable affidavit of relinquishment shall be appointed managing conservator. The order of appointment may refer to the docket number of the suit and need not refer to the parties nor be accompanied by any other papers in the record.

SECTION 14. This Act applies only to a suit commenced on or after the effective date of this Act. A suit commenced before the effective date of this Act is governed by the law in effect at the time the suit was commenced, and that law is continued in effect for that purpose.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days

in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 879 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 879 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MOTION TO PLACE
HOUSE BILL 164 ON THIRD READING**

Senator Glasgow moved that the regular order of business be suspended and that H.B. 164 be placed on its third reading and final passage.

H.B. 164, Relating to the probation of a term of suspension of a driver's license, permit, or privilege or a term of denial of the issuance of a license or permit.

The motion was lost by the following vote: Yeas 9, Nays 17.

Yeas: Barrientos, Carriker, Glasgow, Henderson, Lyon, Parker, Santiesteban, Truan, Uribe.

Nays: Armbrister, Bivins, Brooks, Brown, Caperton, Dickson, Edwards, Green, Haley, Johnson, Krier, Leedom, Montford, Ratliff, Tejeda, Whitmire, Zaffrini.

Absent: Harris, McFarland, Parmer, Sims, Washington.

HOUSE BILL 1440 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1440, Relating to the identification required for enrollment in public schools; providing criminal penalties.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1440 ON THIRD READING

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1440** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider the following bill and resolution at 1:00 p.m. today:

H.B. 1790

S.R. 764

**CONFERENCE COMMITTEE ON
SENATE BILL 1071 DISCHARGED**

On motion of Senator Green and by unanimous consent, the Senate conferees on **S.B. 1071** were discharged.

Question - Shall the Senate concur in the House amendments to **S.B. 1071**?

Senator Green moved to concur in the House amendments to **S.B. 1071**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2481 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2481, Relating to the confidentiality of the identity of a person who is the victim of certain crimes.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2481 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2481** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2482 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2482, Relating to an exemption from public disclosure for certain information regarding a former official or employee of a governmental body.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 2482 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2482** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might consider the following bills at 6:00 p.m. today:

H.B. 3198

H.B. 2293

SENATE RULE 11.11 SUSPENDED

On motion of Senator Sims and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider the following resolutions upon recess today:

S.C.R. 172

S.C.R. 175

S.R. 747

S.R. 748

S.R. 749

S.R. 750

S.R. 757

S.R. 759

S.R. 760

S.R. 761

S.R. 763

SENATE RULE 11.11 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider the following bill and resolution upon recess today:

H.B. 2990

S.R. 746

SENATE RULE 11.11 SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider the following bills upon recess today:

H.B. 912

H.B. 493

RECESS

On motion of Senator Santiesteban, the Senate at 12:12 p.m. took recess until 2:00 p.m. today.

AFTER RECESS

The Senate met at 2:00 p.m. and was called to order by the President.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

H.C.R. 41	H.B. 528	H.B. 1031	H.B. 2020
H.C.R. 242	H.B. 627	H.B. 1234	H.B. 2050
H.C.R. 289	H.B. 647	H.B. 1297	H.B. 2127
H.B. 301	H.B. 648	H.B. 1364	H.B. 2316
H.B. 318	H.B. 755	H.B. 1507	H.B. 2456
H.B. 340	H.B. 832	H.B. 1633	H.B. 2487
H.B. 366	H.B. 869	H.B. 1667	H.B. 2612
H.B. 433	H.B. 993	H.B. 1724	H.B. 2648
H.B. 438	H.B. 995	H.B. 1768	H.B. 3114
			H.B. 3130

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

H.B. 1614
H.B. 457
H.B. 1215
H.B. 2478
H.B. 3192
H.B. 1760
H.B. 3173
H.B. 1786 (Amended)
H.B. 1285 (Amended)
C.S.H.B. 1434
C.S.H.B. 2485
C.S.H.B. 1986
C.S.H.B. 3164
C.S.H.B. 1803
C.S.H.B. 1059

By unanimous consent, Senator Caperton submitted the following report for the Committee on Finance:

H.B. 2475
H.B. 1270 (Amended)
C.S.S.R. 746

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.C.R. 265

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

S.R. 764

By unanimous consent, Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 825 (Amended)

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 1849

By unanimous consent, Senator Johnson, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 1790

By unanimous consent, Senator Montford submitted the following report for the Committee on State Affairs:

H.B. 2423

H.B. 2150

H.B. 1494 (Amended)

H.B. 3043 (Amended)

C.S.H.B. 912

By unanimous consent, Senator Sims submitted the following report for the Committee on Administration:

S.R. 763

S.R. 761

S.R. 760

S.R. 759

S.R. 757

S.R. 750

S.R. 749

S.R. 748

S.C.R. 175

S.R. 745

S.C.R. 172

C.S.S.R. 693

C.S.S.R. 747

**CONFERENCE COMMITTEE REPORT
SENATE BILL 1405**

Senator Caperton submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1405** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CAPERTON
WASHINGTON
GLASGOW
On the part of the Senate

WILLIAMSON
ALEXANDER
DUTTON
On the part of the House

A BILL TO BE ENTITLED**AN ACT**

relating to the membership and duties of the Texas Council on Offenders with Mental Impairments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (8), Section 1, Article 4413(49a), Revised Statutes, is amended to read as follows:

(8) "Council" means the Texas Council on Offenders with Mental Impairments [~~Interagency Council on Mentally Retarded, Developmentally Disabled, and Mentally Ill Offenders~~].

SECTION 2. Section 1, Article 4413(49a), Revised Statutes, is amended by adding Subdivision (9) to read as follows:

(9) "Offenders with Mental Impairments" means a mentally ill offender, a mentally retarded offender, or a developmentally disabled offender as those terms are defined in this Act.

SECTION 3. Subsection (a), Section 3, Article 4413(49a), Revised Statutes, is amended to read as follows:

(a) The council is composed of 28 [27] members. The governor shall appoint nine at-large members to serve on the council. The executive head of each of the following agencies or associations, or that person's designated representative, shall serve as members of the council:

- (1) the Texas Department of Corrections;
- (2) the Texas Department of Mental Health and Mental Retardation;
- (3) the Board of Pardons and Paroles;
- (4) the Texas Adult Probation Commission;
- (5) the Texas Juvenile Probation Commission;
- (6) the Texas Youth Commission;
- (7) the Texas Rehabilitation Commission;
- (8) the Central Education Agency;
- (9) the Criminal Justice Policy Council;
- (10) the Mental Health Association in Texas;
- (11) the Texas Commission on Alcohol and Drug Abuse;
- (12) the Commission on Law Enforcement Officer Standards and Education;
- (13) the Texas Council of Community Mental Health and Mental Retardation Centers;
- (14) the Commission on Jail Standards;
- (15) the Texas Planning Council for Developmental Disabilities;
- (16) the Texas Association for Retarded Citizens;
- (17) the Texas Alliance for the Mentally Ill; [and]
- (18) the Parent Association for the Retarded of Texas, Inc.; and
- (19) the Texas Department of Human Services.

SECTION 4. Article 4413(49a), Revised Statutes, is amended by adding Section 6A to read as follows:

Sec. 6A. **REPORTS.** The council shall file a biennial report to the legislature by June 1 of every even-numbered year.

SECTION 5. Section 7, Article 4413(49a), Revised Statutes, is amended to read as follows:

Sec. 7. **POWERS AND DUTIES.** The council shall:

- (1) determine the status of mentally retarded, developmentally disabled, and mentally ill offenders in the state criminal justice system;
- (2) identify needed services for mentally retarded, developmentally disabled, and mentally ill offenders;

(3) develop a plan for meeting the treatment, rehabilitation, and educational needs of mentally retarded, developmentally disabled, and mentally ill offenders, including a case management system and the development of community-based alternatives to incarceration;

(4) cooperate in coordinating procedures of represented agencies for the smooth and orderly provision of services for mentally retarded, developmentally disabled, and mentally ill offenders;

(5) evaluate various in-state and out-of-state programs for mentally retarded, developmentally disabled, and mentally ill offenders and recommend to the directors of current state programs methods of improving those programs;

(6) collect and disseminate information about available programs to judicial officers, probation and parole officers, and the general public;

(7) distribute money appropriated by the legislature to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of programs for mentally retarded, developmentally disabled, or mentally ill offenders;

(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the council to perform its duties; and

(9) develop and implement [a] pilot projects [project] to demonstrate a cooperative program that identifies, evaluates, and manages outside of incarceration offenders with mental impairments and who do not have an instant offense that is an offense described in Section 3g, Article 42.12, Code of Criminal Procedure [nonviolent mentally retarded, developmentally disabled, and mentally ill offenders].

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT SENATE BILL 1386

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 25, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1386 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BIVINS
McFARLAND
BROWN

SHEA
PARKER
UHER

SANTIESTEBAN
RATLIFF
On the part of the Senate

SMITHEE
McCOLLOUGH
On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the rights of a victim of certain delinquent children and children in need of supervision and of the victim's guardian and certain relatives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Family Code, is amended by adding Chapter 57 to read as follows:

CHAPTER 57. RIGHTS OF VICTIMS

Sec. 57.001. **DEFINITIONS.** In this chapter:

(1) "Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(2) "Guardian of a victim" means a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim.

(3) "Victim" means a person who:

(A) is the victim of the delinquent conduct of a child that includes the elements under the penal law of this state of sexual assault, kidnapping, or aggravated robbery; or

(B) has suffered bodily injury or death as a result of the conduct of a child that violates a penal law of this state.

Sec. 57.002. **VICTIM'S RIGHTS.** A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the juvenile justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the court or person appointed by the court take the safety of the victim or the victim's family into consideration as an element in determining whether the child should be detained before the child's conduct is adjudicated;

(3) the right, if requested, to be informed of relevant court proceedings and to be informed in a timely manner if those court proceedings have been canceled or rescheduled;

(4) the right to be informed, when requested, by the court or a person appointed by the court concerning the procedures in the juvenile justice system, including general procedures relating to the preliminary investigation and informal adjustment of a case;

(5) the right to provide pertinent information to a juvenile court conducting a disposition hearing concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before the court renders its disposition;

(6) the right to receive information regarding compensation to victims as provided by the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), including information related to the costs that may be compensated under that Act and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that Act, the payment of medical expenses under Section 1, Chapter 299, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4447m, Vernon's Texas Civil Statutes),

for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of procedures for release under supervision, to participate in the release process, to be notified, if requested, of release proceedings concerning the child, to provide to the Texas Youth Commission for inclusion in the child's file information to be considered by the commission before the release under supervision of the child, and to be notified, if requested, of the child's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the child alleged to have committed the conduct and relatives of the child, before testifying in any proceeding concerning the child, or, if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the child and the child's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause; and

(11) the right to be present at all public court proceedings related to the conduct of the child, subject to the approval of the court.

Sec. 57.003. DUTY OF JUVENILE BOARD. The juvenile board shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Section 57.002 of this code, and, on request, an explanation of those rights.

Sec. 57.004. NOTIFICATION. A court, a person appointed by the court, or the Texas Youth Commission is responsible for notifying a victim, guardian of a victim, or close relative of a deceased victim of a proceeding under this chapter only if the victim, guardian of a victim, or close relative of a deceased victim requests the notification in writing and provides a current address to which the notification is to be sent.

Sec. 57.005. LIABILITY. The Texas Youth Commission, a juvenile board, a court, a person appointed by a court, an attorney for the state, a peace officer, or a law enforcement agency is not liable for a failure or inability to provide a right listed under Section 57.002 of this code.

Sec. 57.006. APPEAL. The failure or inability of any person to provide a right or service listed under Section 57.002 of this code may not be used by a child as a ground for appeal or for a post conviction writ of habeas corpus.

Sec. 57.007. STANDING. A victim, guardian of a victim, or close relative of a victim does not have standing to participate as a party in a juvenile proceeding or to contest the disposition of any case.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 2603 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2603, Relating to a lien on aircraft for repairs and maintenance.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 2603** in Section 1 on page 1 by providing for the numbering of paragraph "(a)" on line 7 after the word "Lien." and before the word "A"; further, insert a new paragraph "(b)" on line 14 to read as follows:

"(b) For the purposes of this subchapter repair and maintenance of aircraft includes the overhaul and repair of engines from aircraft."

The committee amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 2603** in Section 1, page 2 by providing for the numbering of paragraph "(a)" on line 2 after the word "Lien." and before the word "A"; further, insert a new paragraph "(b)" on line 15 to read as follows:

"(b) The recording of a lien under this subchapter is not required to perfect a lien on aircraft engines where the lienholder retains possession pursuant to Section 70.302 (a) or regains possession pursuant to Section 70.302 (b)."

The committee amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following committee amendment to the bill:

Committee Amendment No. 3

Amend **H.B. 2603** in Section 1 on page 2, line 16 by striking the following, "the 15th day after the date of" and inserting in lieu thereof the following:

"the 30th day after the date of invoice for the"

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2603 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2603** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE JOINT RESOLUTION 51 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 51, Proposing a constitutional amendment authorizing the legislature to provide for the issuance of bonds and state financing of development and production of Texas products and businesses.

The resolution was read second time.

Senator Carriker offered the following amendment to the resolution:

Amend **H.J.R. 51** as follows:

(1) On page 1, line 11, strike the period following the word "law", and substitute the following:

"and for the purpose of providing money to establish a rural microenterprise development fund in the state treasury to be used without further appropriation in the manner provided by law."

(2) On page 1, line 11, between the words "The" and "fund", insert the words "Texas agricultural".

(3) On page 1, line 15, after the period following the end of the sentence, insert the following:

"(b) The rural microenterprise development fund shall be used only in furtherance of a program established by the legislature to foster and stimulate the creation and expansion of small businesses in rural areas."

(4) On page 1, line 15, strike the words "Financial assistance" and substitute "The financial assistance offered by both funds".

(5) On page 1, strike subsection (b) and substitute the following:

"(b) The principal amount of bonds outstanding at one time may not exceed \$25 million for the Texas agricultural fund, and \$5 million for the rural microenterprise development fund."

(6) On page 1, line 22, between the word "fund" and the period following the sentence, insert: "and within the rural microenterprise development fund".

(7) On page 1, line 24, strike the word "account" and substitute the word "accounts".

(8) On page 2, line 1, strike the word "fund" and substitute the word "funds".

(9) On page 2, line 13, strike the word "amount" and substitute the word "amounts".

(10) On page 2, line 14, strike the word "account", and substitute the word "accounts".

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to third reading viva voce vote.

HOUSE JOINT RESOLUTION 51 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.J.R. 51 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1111 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1111, Relating to the issuance of general obligation or revenue bonds to provide financial assistance to agricultural businesses.

The bill was read second time.

Senator Carriker offered the following amendment to the bill:

Amend **H.B. 1111** as follows:

(1) On page 1, line 17, between the word "time" and the period following the end of the sentence, insert: "for the purpose of providing money to establish a Texas agricultural fund".

(2) On page 1, line 19, between the words "bonds" and "shall", insert: "issued under Subsection (c) of this section".

(3) On page 2, after line 5, add Subsections (e) and (f) to read as follows:

"(e) The authority may issue and sell general obligation bonds of the state for the purpose of providing money to establish a rural microenterprise development fund so that the principal amount outstanding shall not exceed \$5 million at any one time. The authority may issue the bonds in one or several installments.

(f) Proceeds of the bonds issued under Subsection (e) of this section shall be deposited in the rural microenterprise development fund, which is created in Section 44.013."

(4) On page 12, after line 14, add the following and renumber the subsequent sections accordingly:

"SECTION 2. The heading of Chapter 44, Agriculture Code, is amended to read as follows:

**AGRICULTURAL DIVERSIFICATION AND MICROENTERPRISE
SUPPORT PROGRAMS**

SECTION 3. Section 44.001, Agriculture Code, is amended by adding Subdivisions (6) and (7) to read as follows:

(6) "Microenterprise" means a small business located in a rural area in which the owner and the owner's family provide the bulk of the management and a significant amount of the labor required to operate the enterprise. Priority under this Act shall be given to microenterprises which demonstrate significant potential for expansion that will provide jobs in economically depressed rural communities or to currently unemployed rural residents.

(7) "Rural Area" means an area which is predominantly rural in character, being one which the Advisory Board defines and declares to be a rural area.

SECTION 4. Section 44.002, Agriculture Code, is amended to read as follows:

Sec. 44.002. CREATION OF PROGRAMS. (a) The commissioner shall create an agricultural diversification program to:

(1) support commercial use of agricultural research and innovation;

(2) increase the capabilities of community and regional organizations to train and assist new or expanding agricultural-based businesses;

(3) start small business incubators; and

(4) encourage private commercial loans for enhanced production, processing, and marketing of certain agricultural crops.

(b) The commissioner shall create a microenterprise support program to provide financial assistance to microenterprises in rural areas.

SECTION 5. Section 44.003, Agriculture Code, is amended to read as follows:

Sec. 44.003. ADVISORY BOARD. (a) The Agricultural Diversification Board is established for the agricultural diversification program and the rural microenterprise support program. The board is composed of the commissioner of agriculture, the director of the Institute for International Agribusiness Studies at Prairie View A&M University, and four members appointed by the governor with the advice and consent of the senate. The governor shall appoint the chairman of the board.

(b) The speaker of the house of representatives shall appoint one state representative as an ex officio nonvoting member of the board and the lieutenant governor shall appoint one state senator as an ex officio nonvoting member of the board. The commissioner shall make annual reports to the ex officio members accounting for the receipt and use of all gifts and grants of money from the federal government, any local government, or any private corporation or other person for the agricultural diversification program and the rural microenterprise support program.

(c) Members of the board serve terms of two years expiring January 1 of each odd-numbered year.

(d) The board members are entitled to actual and necessary expenses incurred in carrying out their official duties.

(e) The board shall assist the commissioner in the creation and implementation of the agricultural diversification program and the rural microenterprise support program, including recommending additional criteria for the awarding of grants and loans.

(f) If a vacancy occurs on the board, the governor shall appoint another individual to complete the term.

SECTION 6. Chapter 44, Agriculture Code, is amended by adding Section 44.0045 to read as follows:

Sec. 44.0045. MICROENTERPRISE SUPPORT PROGRAM LOANS. (a) The commissioner with the consent of a majority of the board shall administer a loan program supporting established and proposed microenterprises in rural areas by providing loans to expand, modernize, or otherwise improve established microenterprises and to begin operation of proposed microenterprises.

(b) A proposed microenterprise loan applicant may receive a loan of up to \$15,000 to begin operation of the microenterprise.

(c) An established microenterprise loan applicant may receive a loan of up to \$30,000 to expand, modernize, or otherwise improve an established microenterprise.

(d) The commissioner and board of the microenterprise support program may reserve a portion of the total fund for use in cooperative loan programs established with the participation of other public or private lenders.

(e) Financial assistance in the form of a loan may not be used to refinance an existing debt of a proposed or existing microenterprise.

SECTION 7. Section 44.012, Agriculture Code, is amended to read as follows:

Sec. 44.012. MONEY FOR GRANTS AND LOANS. The commissioner may accept gifts and grants of money from the federal government, local governments, or private corporations or other persons for use in making grants and loans under the agricultural diversification program and the rural microenterprise support program. The legislature may appropriate money for grants and loans under the programs [program].

SECTION 8. Chapter 44, Agriculture Code, is amended by adding Section 44.013 to read as follows:

"Sec. 44.013. RURAL MICROENTERPRISE DEVELOPMENT FUND. The rural microenterprise development fund is a fund in the state treasury. Money appropriated to the Agricultural Diversification Board for use in making loans under the rural microenterprise support program, other amounts received by the state for loans made under the program, and other money received by the board for the program and required by the board to be deposited in the fund shall be deposited to the credit of the fund. The fund shall operate as a revolving fund, the contents of which shall be applied and reapplied for the purposes of the rural microenterprise support program."

(5) After section 8 add a new section 9 and renumber the subsequent sections accordingly: "SECTION 9. This Act takes effect September 1, 1989."

The amendment was read and was adopted viva voce vote.

On motion of Senator Edwards and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1111 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.B. 1111 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE JOINT RESOLUTION 13 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 13, Proposing a constitutional amendment to authorize the legislature to exempt from ad valorem taxation certain property of nonprofit veterans organizations.

The resolution was read second time and was passed to third reading viva voce vote.

HOUSE JOINT RESOLUTION 13 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.J.R. 13 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

GUEST PRESENTED

Senator Caperton was recognized and presented Dr. Haywood Robinson of Bryan.

Dr. Robinson, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

**MOTION TO PLACE COMMITTEE SUBSTITUTE
HOUSE BILL 5 ON SECOND READING**

Senator Tejeda moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 5, Relating to the offenses of engaging in organized criminal activity.

On motion of Senator Tejeda and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2803 ON SECOND READING**

Senator Henderson moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 2803, Relating to creation of the Texas capital access fund and the economic development of the state.

The motion prevailed by the following vote: Yeas 19, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Caperton, Dickson, Edwards, Green, Haley, Harris, Henderson, Krier, Lyon, Montford, Ratliff, Santiesteban, Sims, Truan, Zaffirini.

Nays: Leedom.

Present-not voting: Glasgow.

Absent: Brooks, Carriker, Johnson, McFarland, Parker, Parmer, Tejeda, Uribe, Washington, Whitmire.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2803 ON THIRD READING**

Senator Henderson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 2803 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Krier, Lyon, Montford, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Leedom, Washington.

Absent: Carriker, Johnson, McFarland, Parker, Parmer.

The bill was read third time and was passed viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House moved to reconsider the vote by which it concurred in Senate amendments to **H.B. 1588**. The House then refused to concur in Senate amendments to **H.B. 1588** and requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Schlueter, Chair; Stiles, Saunders, Hightower, Harrison.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.J.R. 11**. The following have been appointed on the part of the House: Berlanga, Chair; Harris of Tarrant, Vowell, Earley, Cain.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 5 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 5, Relating to the offenses of engaging in organized criminal activity.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 5 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 5** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 427**

Senator Edwards submitted the following Conference Committee Report:

Austin, Texas
May 25, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 427 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

EDWARDS
CAPERTON
DICKSON
On the part of the Senate

OAKLEY
BERLANGA
BLACKWOOD
On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to solicitations made in the name of law enforcement personnel; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1 and 2, Chapter 1054, Acts of the 70th Legislature, Regular Session, 1987 (Article 9023a, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. (a) In this Act:

(1) "Solicitor" means a person who:

(A) requests contributions in person, by telephone, or by mail for a law enforcement organization; or

(B) solicits memberships in a law enforcement organization from persons who are not employed by law enforcement agencies.

(2) "Law enforcement organization" means a nongovernmental organization that uses in the name or in a publication of the organization the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "marshal," "deputy marshal," or any other term that reasonably implies that the organization is composed of law enforcement or public safety personnel. [A person who makes a solicitation of contributions in person, by telephone, or by mail, representing a nongovernmental organization that uses in the name or in a publication of the organization the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," or any other term that reasonably implies that the organization is composed of law enforcement or public safety personnel, shall notify the person solicited, verbally if the solicitation is in person, and in any printed matter used by the solicitor to seek or collect contributions that the person may contact the attorney general to examine the information required to be disclosed by this Act.]

(b) A law enforcement organization that solicits shall annually submit a report to the attorney general. The report is public information. The report must include

~~[Before beginning solicitations, the solicitor must have on file with the attorney general for public disclosure the following information]:~~

~~(1) the name, street address, and telephone number of each [the] solicitor that represents the law enforcement organization;~~

~~(2) the name, street address, and telephone number of each organization or fund on behalf of which all or part of the contributions will be used, or if there is no organization or fund, a statement describing the manner in which the contributions will be used;~~

~~(3) a statement of whether the organization or fund for which the contributions are solicited has a charitable tax exemption under both federal and state law;~~

~~(4) the name and law enforcement agency of each peace officer who serves on the board of directors or governing body of the organization or fund for which the contributions are solicited, if any;~~

~~(5) the number of members of the law enforcement [each] organization who are licensed full-time peace officers of this state or a subdivision of this state, as determined on December 31 of the year preceding the year in which solicitations are [the solicitation is] made, [for which the contributions are solicited;] if any; [and]~~

~~(6) the names of each local, chapter, lodge, association, or group of licensed peace officers that are members of the law enforcement organization for which contributions are solicited, if any;~~

~~(7) the percentage of the funds collected during the previous year by the law enforcement organization through solicitations that was paid to the solicitors or employers of the solicitors or paid as expenses to maintain the solicitation operation, if any; and~~

~~(8) If a law enforcement organization is required to file an Internal Revenue Service Form 990 or its successor, the law enforcement organization shall also file with the attorney general a copy of that form that the law enforcement organization most recently filed with the Internal Revenue Service.~~

~~(c) A solicitor shall notify the person solicited verbally, if the solicitation is in person or by telephone, and in any printed matter used by the solicitor to seek or collect amounts solicited that the person may contact the attorney general to examine the information required to be disclosed by this Act.~~

~~(d) A solicitor may not make a materially false or misleading statement of fact during a solicitation that would lead a reasonable person to believe that proceeds of the solicitation are being used for some purpose other than the purpose for which the funds are actually used.~~

~~(e) The report required by Subsection (b) of this section shall be filed before the initiation of solicitations if the law enforcement organization has not solicited previously. Subsequent reports shall be filed before the end of business hours on January 15 of each year or the next regular business day if January 15 is a Saturday, Sunday, or holiday on which the attorney general's office is closed.~~

Sec. 2. (a) A person commits an offense if the person knowingly or intentionally violates any provision of this Act.

(b) An offense under this Act is a Class B misdemeanor, except that if it be shown on the trial of an offense under this Act that the defendant has been convicted previously under this Act, the offense is a Class A misdemeanor.

(c) A corporation or association may be held criminally responsible for conduct by a person acting on its behalf if the person's conduct constitutes an offense under this Act.

(d) It is a defense to prosecution under this section if:

(1) the defendant is a law enforcement organization;

(2) the person whose conduct constitutes the offense was acting on behalf of a corporation or association with whom the law enforcement organization had contracted for services; and

(3) the person committed the conduct without the knowledge of the law enforcement organization.

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 1856 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1856, Relating to the period in which a person must bring suit for certain damages against certain surveyors.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1856 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1856** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 1531 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1531, Relating to public works projects requiring the involvement of a registered professional engineer.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Amend **H.B. 1531** Sec. 19 (a) by deleting the colon after "does not exceed" and deleting subsections (1) and (2) and adding in lieu thereof: Eight Thousand Dollars (\$8,000.00).

The amendment was read and was adopted viva voce vote.

On motion of Senator Leedom and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1531 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.B. 1531 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1425 ON SECOND READING

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1425, Relating to the application of sales and use taxes to certain computer programming services.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend **H.B. 1425** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 151.0101(a), Tax Code, is amended to read as follows:

(a) "Taxable services" means:

- (1) amusement services;
- (2) cable television services;
- (3) personal services;
- (4) motor vehicle parking and storage services;
- (5) the repair, remodeling, maintenance, and restoration of tangible

personal property, except:

- (A) aircraft;
- (B) a ship, boat, or other vessel, other than a sports fishing boat or any other vessel used for pleasure; ~~and~~
- (C) the repair, maintenance, and restoration of a motor vehicle; and

(D) the repair, maintenance, creation, and restoration of a computer program, including its development or modification, not sold by the person performing the repair, maintenance, creation, or restoration service;

- (6) telecommunications services;
- (7) credit reporting services;
- (8) debt collection services;
- (9) insurance services;
- (10) information services;
- (11) real property services;
- (12) ~~effective January 1, 1988;~~ data processing services;
- (13) ~~effective January 1, 1988;~~ real property repair and remodeling;

and

- (14) security services.

SECTION 2. Section 151.328, Tax Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) Repair, remodeling, and maintenance services to aircraft operated by a certificated or licensed carrier of persons or property or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property are exempted from the taxes imposed by this chapter.

(d) Machinery, tools, and equipment used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property are exempted from the taxes imposed by this chapter.

(e) Tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property is exempted from the taxes imposed by this chapter.

SECTION 3. Subtitle E, Tax Code, is amended by adding Chapter 159 to read as follows:

**CHAPTER 159. TAXES ON SALES AND USE
OF BOATS AND BOAT MOTORS
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 159.001. DEFINITIONS. In this section:

(1) "Department" means the Parks and Wildlife Department.

(2) "Motorboat" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(3) "Boat dealer" means a person engaged in the business of selling taxable boats or motors at an established or permanent place in this state.

(4) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(5) "Retail sale" means a sale of an item other than a sale in which the purchaser acquires the item for the exclusive purpose of resale.

(6) "Sale" includes:

(A) an installment and credit sale;

(B) an exchange of property for property or money;

(C) an exchange in which property is transferred but the seller retains title as security for payment of the purchase price; and

(D) any other closed transaction that constitutes a sale.

(7) "Tax assessor-collector" means a county tax assessor-collector.

(8) "Taxable boat or motor" means:

(A) a motorboat;

(B) an outboard motor; or

(C) any other vessel other than a canoe, kayak, rowboat, raft, punt, or other vessel designed to be propelled by paddle, oar, or pole.

(9) "Use" does not include the storage, display, or holding of an item exclusively for sale.

Sec. 159.002. TOTAL CONSIDERATION. (a) "Total consideration" means the amount paid or to be paid for a taxable boat or motor, including accessories attached on or before the sale, without deducting:

(1) the cost of the item;

(2) the cost of material, labor or service, interest paid, loss, or any other expense;

(3) the cost of transportation of the item before its sale; or

(4) the amount of any manufacturers' or importers' excise tax imposed on the item by the United States.

(b) "Total consideration" of a taxable boat or motor does not include:

(1) a cash discount;

(2) a full cash or credit refund to a customer of the sales price of the item returned to the seller;

(3) the amount charged for labor or service rendered in remodeling or repairing the taxable boat or motor sold;

(4) a financing, carrying, or service charge or interest on credit extended on the item sold under a conditional sale or other deferred payment contract;

(5) the value of a taxable boat or motor taken by a seller as all or a part of the consideration for sale of the item; or

(6) a charge for transportation of the item after a sale.

Sec. 159.003. SUPERVISION. (a) The comptroller shall supervise the collection of the taxes imposed by this chapter and adopt rules for the determination of the taxable value of taxable boats and motors and the administration of this chapter.

(b) The comptroller shall furnish a copy of the rules to each tax assessor-collector and to the department. Each tax assessor-collector and the department shall consistently apply the rules authorized by this section.

[Sections 159.004-159.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION OF TAX

Sec. 159.021. RETAIL SALES TAX. (a) A tax is imposed on every retail sale of a taxable boat or motor sold in this state. The tax is an obligation of and shall be paid by the purchaser of the taxable boat or motor.

(b) The tax rate is six percent of the total consideration.

Sec. 159.022. USE TAX. (a) A use tax is imposed on a taxable boat or motor purchased at retail outside this state and used in this state or brought into this state for use by a Texas resident or other person who is domiciled or doing business in this state. The tax is an obligation of and shall be paid by the person who uses the boat or motor in this state or brings the boat or motor into this state.

(b) The tax rate is six percent of the total consideration.

Sec. 159.023. NEW RESIDENT. (a) A use tax is imposed on a new resident of this state who brings into this state for use in this state a taxable boat or motor that has been purchased and owned by the new resident in any other state or foreign country.

(b) The tax is \$15 for each taxable boat or motor.

(c) The tax imposed by this section is in lieu of the tax imposed by Section 159.022.

Sec. 159.024. EXEMPTION. The taxes imposed by this chapter do not apply to the sale of a taxable boat or motor to or use of a taxable boat or motor by the state or federal government.

Sec. 159.025. CREDIT FOR OTHER TAXES. A person is entitled to a credit against the tax imposed by Section 159.022 on a taxable boat or motor in an amount equal to the amount of any similar tax paid by the person in another state on the sale, purchase, or use of the taxable boat or motor if the state in which the tax was paid provides a similar credit for a taxpayer of this state.

[Sections 159.026-159.040 reserved for expansion]

SUBCHAPTER C. COLLECTION AND ENFORCEMENT OF TAXES

Sec. 159.041. COLLECTION PROCEDURE. (a) The department and each tax assessor-collector shall collect the taxes imposed by this chapter, other than taxes collected by a boat dealer under Section 159.042. The department or the tax assessor-collector of the county in which an application for a Texas identification number or certificate of title for a taxable boat or motor is made shall collect the taxes imposed by this chapter on that boat or motor, unless the tax has previously been paid or has been collected by a boat dealer under Section 159.042.

(b) The department or the tax assessor-collector may not accept an application for a Texas identification number or certificate of title for a taxable boat or motor

from a person other than a boat dealer unless the tax, if any, is or has previously been paid.

(c) Except as provided by Section 159.042 for taxes collected by a boat dealer, the tax imposed by Section 159.021 is due on the 20th working day after the date that the taxable boat or motor is delivered to the purchaser. The purchaser shall pay the tax to the department or to a tax assessor-collector on or before the due date.

(d) The tax imposed by Section 159.022 or 159.023 is due on the 20th working day after the date that the taxable boat or motor is brought into this state. The person liable for the tax shall pay the tax to the department or to a tax assessor-collector on or before the due date.

Sec. 159.042. BOAT DEALER. A boat dealer shall collect and report a tax imposed by this chapter on its retail sales of taxable boats and motors and shall register as a retailer with the comptroller in the same manner as is required of a retailer under Subchapter F, Chapter 151. The dealer shall obtain from the comptroller a boat dealer's permit for each place of business in this state.

Sec. 159.043. PAYMENT BY SELLER. If the comptroller on an audit of the records of a seller finds that the amount of tax due was incorrectly reported on a joint affidavit and that the amount of tax paid was less than the amount due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the taxable boat or motor, the seller and purchaser are jointly and severally liable for the amount of the tax determined to be due.

Sec. 159.044. REQUIRED AFFIDAVITS. (a) Except for a tax collected by a boat dealer under Section 159.042, the person obligated to pay a tax imposed by this chapter on a transaction shall file a joint affidavit with the department or tax assessor-collector on payment of a tax imposed by this chapter.

(b) If a taxable boat or motor is sold by a person other than a boat dealer at a retail sale, the seller and purchaser shall make a joint affidavit stating the value in dollars of the total consideration for the boat or motor at the time of sale.

(c) If the ownership of a taxable boat or motor is transferred as a result of a gift or even exchange, the principal party shall make a joint affidavit stating the nature of the transaction.

(d) The department or the tax assessor-collector shall examine each joint affidavit for the purpose of determining the truth and accuracy of the information it contains. If the department, the assessor-collector, or the comptroller has reason to question the truth of the information in an affidavit, or if any material fact fails to meet the rules adopted by the comptroller, the department, the assessor-collector, or the comptroller may require any party to the affidavit to furnish substantiation of information in the affidavit before accepting an application for a Texas identification number or certificate of title.

(e) The tax assessor-collector shall keep a copy of each affidavit and any substantiating materials until it is called for by the comptroller for auditing.

Sec. 159.045. RECORDS. (a) A boat dealer shall keep at its principal office for at least four years from the date of the sale a complete record of each sale of a taxable boat or motor. The record must include a copy of the invoice of each taxable item sold. The invoice copy must show the full price of the boat or motor and the itemized price of all its accessories.

(b) All sales and supporting records of a boat dealer are open to inspection and audit by the comptroller.

Sec. 159.046. TAX RECEIPTS. (a) The comptroller shall prescribe the form of a tax receipt to be issued to a person paying a tax imposed by this chapter.

(b) The boat dealer, department, or tax assessor-collector collecting a tax imposed by this chapter shall:

(1) issue the original receipt to the person paying the tax;

(2) send a duplicate copy of the receipt to the comptroller according to the rules of the comptroller; and

(3) retain one duplicate copy of the receipt as a permanent record of the transaction according to the rules of the comptroller.

Sec. 159.047. PENALTY. (a) A person who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax before the 31st day after the date on which the tax is due, the person forfeits an additional five percent.

(b) The penalties provided by Chapter 151 for a retailer's failure to collect or report a tax imposed by Chapter 151 apply to a boat dealer's failure to collect or report a tax imposed by this chapter as required by this chapter and the rules of the comptroller.

(c) The minimum penalty imposed by this section is \$1.

Sec. 159.048. REVOCATION OF PERMIT. The comptroller may revoke or suspend any one or more of a boat dealer's permits if the dealer fails to comply with this chapter or with a rule of the comptroller relating to a tax imposed by this chapter. The comptroller shall provide the permit holder with a hearing in accordance with rules adopted for that purpose.

[Sections 159.049-159.060 reserved for expansion]

SUBCHAPTER D. PENALTIES

Sec. 159.061. OPERATION; PENALTY. (a) A person commits an offense if the person knowingly operates a taxable boat or motor in this state and the person knows that a tax imposed by this chapter on the boat or motor has not been paid and is delinquent.

(b) An offense under this section is a Class B misdemeanor.

Sec. 159.062. FAILURE TO KEEP RECORDS. (a) A boat dealer commits an offense if the boat dealer fails to make and retain complete records for the period of four years as provided by Section 159.045.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$500.

[Sections 159.063-159.120 reserved for expansion]

SUBCHAPTER E. DISPOSITION OF TAXES

Sec. 159.121. AMOUNT OF TAX SENT TO COMPTROLLER. (a) Except as provided by Subsections (b) and (c), on the 10th day of each month, each tax assessor-collector and the department shall send the money collected from taxes imposed by this chapter to the comptroller.

(b) A tax assessor-collector shall retain one-half of one percent of the taxes collected by the tax assessor-collector under this chapter as fees of office to be retained or paid into the officers' salary fund of the county as provided by law.

(c) The department shall retain one-half of one percent of the taxes collected by the department under this chapter as compensation for its services in collecting the taxes and administering this chapter. The amount retained shall be deposited to the credit of the game, fish, and water safety fund.

Sec. 159.122. ALLOCATION OF REVENUE. (a) The revenue from the taxes imposed by this chapter from a sale of a taxable boat or motor by a boat dealer shall be allocated to the general revenue fund and to any political subdivision of this state in which the sale occurs that imposes a local general sales and use tax. The revenue shall be allocated as follows:

(1) to each political subdivision of this state that imposes a general sales and use tax applicable to the location at which the sale occurs, an amount equal to the amount that would be received by that political subdivision if its general sales and use tax were applied to the sale of the taxable boat or motor; and

(2) the remainder to the general revenue fund.

(b) The revenue received by the comptroller from the taxes imposed by this chapter not covered by Subsection (a) shall be deposited to the credit of the general revenue fund.

(c) Revenue allocated to a political subdivision under this section may be used only for public purposes of the political subdivision.

SECTION 4. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3291 to read as follows:

Sec. 151.3291. BOATS AND BOAT MOTORS. (a) The sale, other than the lease or rental, and the storage, use, or other consumption of a taxable boat or motor is exempt from the taxes imposed by this chapter.

(b) In this section, "taxable boat or motor" has the meaning assigned by Chapter 159.

SECTION 5. Section 151.0048, Tax Code is amended to read as follows:

Sec. 151.0048. "REAL PROPERTY SERVICE." "Real property service" means:

- (1) landscaping;
- (2) the care and maintenance of lawns, yards, or ornamental trees or other plants;
- (3) garbage or other solid waste collection or removal;
- (4) building or grounds cleaning, janitorial or custodial services; or
- (5) a structural pest control service covered by Section 2, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes); or
- ~~[(6) the surveying of real property].~~

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect October 1, 1989.

(b) Sections 3 and 4 of this Act take effect January 1, 1990, except that the provisions of Chapter 159, Tax Code, as added by this Act, authorizing the comptroller or other public entity to adopt rules and requiring the registration of motorboat dealers take effect October 1, 1989.

(c) The change in law made by any provision of this Act does not affect taxes imposed before the effective date of that provision, and the law in effect before the effective date is continued in effect for purposes of the liability for and collection of those taxes.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1425 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1425** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 40**

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 40 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN
BARRIENTOS
HALEY
PARKER
WHITMIRE

On the part of the Senate

RODRIGUEZ
ARNOLD
GLOSSBRENNER
HAMMOND

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the assessment of the academic achievement of certain primary students.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.551, Education Code, is amended to read as follows:

Sec. 21.551. ADOPTION AND ADMINISTRATION OF INSTRUMENTS.

(a) The Central Education Agency shall adopt appropriate criterion referenced assessment instruments designed to assess ~~[minimum basic skills]~~ competencies in reading, writing, social studies, science, and mathematics for all pupils at the ~~[first]~~ third, fifth, seventh, and ninth grade levels and in mathematics and English language arts for all pupils at the 12th grade level.

(b) The Central Education Agency shall also adopt secondary exit level assessment instruments designed to assess mathematics, social studies, science, and English language arts competencies for pupils at the 12th grade level. The English language arts section must include the assessment of writing competencies. The State Board of Education shall administer the assessment instruments.

(c) The secondary exit level assessment instrument must be administered to all pupils at the 11th grade level. Each pupil who did not perform satisfactorily on all sections when tested at the 11th grade level shall be given opportunities during the 11th and 12th grade levels to retake the sections of the assessment instrument on which the pupil did not perform satisfactorily. The State Board of Education may adopt a schedule for the administration of the secondary exit level assessment instrument [including the opportunity to retake these sections during the final month of the school term in which the pupil is enrolled at the 12th grade level].

(d) The assessment instruments shall be designed to include assessment of a student's problem solving ability and complex thinking skills.

(e) The assessment instruments required by Subsections (a) and (b) of this section must include assessments of social studies and science not later than the 1994-95 school year. The State Board of Education may adopt a schedule for the addition of the assessment of those subjects at the required grade levels in phases. This subsection expires August 31, 1995.

SECTION 2. Section 21.559, Education Code, is amended to read as follows:

Sec. 21.559. COMPARISON OF STATE RESULTS TO NATIONAL RESULTS. The Central Education Agency shall obtain nationally norm referenced results for the subject areas and grade levels for which criterion referenced assessment instruments are adopted under Section 21.551 of this code by:

(1) combining norm referenced assessment items with the criterion referenced assessment instruments; or

(2) adopting one or more norm referenced assessment instruments for use in coordination with the criterion referenced assessment instruments. ~~[compare the results of criterion referenced assessment instruments administered under Section 21.551 of this subchapter to nationally norm referenced assessment instruments to determine the level of achievement of students in this state as compared to students in other regions of the country.]~~

SECTION 3. Subchapter O, Education Code, is amended by adding Section 21.560 to read as follows:

Sec. 21.560. BIENNIAL REPORT. The State Board of Education shall biennially report to the legislature an evaluation of the correlation between student grades and student performance on assessment instruments administered under Section 21.551 of this code. The report may be included with other reports made as required by law.

SECTION 4. Section 21.721, Education Code, is amended by adding Subsection (e) to read as follows:

(e) A school district may grant promotions to students in grades below second grade on the basis of an assessment method other than numerical grading.

SECTION 5. Section 21.722(b), Education Code, is amended to read as follows:

(b) If a student's level of achievement for the notice period is below the level required for course credit or grade level advancement under Section 21.721 of this code [in any class or subject a student receives a grade equal to less than 70 on a scale of 100], the grade notice must state the need for a conference between the appropriate teacher and the parent and must quote or summarize the requirements of that section [Section 21.721 of this code].

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(Senator Ratliff in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1504 ADOPTED

Senator Brooks called from the President's table the Conference Committee Report on S.B. 1504. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 25, 1989.)

On motion of Senator Brooks, the Conference Committee Report was adopted viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1211 ADOPTED**

Senator Washington called from the President's table the Conference Committee Report on H.B. 1211. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 25, 1989.)

On motion of Senator Washington, the Conference Committee Report was adopted viva voce vote.

HOUSE BILL 2263 ON SECOND READING

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2263, Relating to access of criminal history record information by the adjutant general.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **H.B. 2263**, SECTION 1, by adding new Subsections (d) and (e) as follows:

(d) Criminal history record information received by the Adjutant General under this section is confidential and is for the exclusive use of the Adjutant General under this section. Except on court order or with the consent of the member of the state military forces or employees of the department or applicant for enlistment or appointment in the state military forces or employment with the department, the criminal history record information may not be released to any other person or agency. The Adjutant General shall destroy the records after the records are used for the purposes authorized under this section.

(e) A person who releases criminal history record information obtained under this section in violation of this section commits an offense. An offense under this subsection is a misdemeanor punishable by confinement in county jail for a term not to exceed six months, by a fine not to exceed \$1,000, or by both such confinement and fine. An offense under this subsection is an offense involving official misconduct.

The amendment was read and was adopted viva voce vote.

On motion of Senator Dickson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 2263 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 2263** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1827 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1827, Relating to recovery of motor vehicle insurance benefits for a motor vehicle impounded for drug violations.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Amend **H.B. 1827**, Section 1, by adding at the end of Subsection (a), Article 5.06-5, as follows:

For the purpose of this section a named insured shall be the person named on the declaration page of an automobile insurance policy and his or her spouse if the policy is written on an individual. If a policy is other than an individual policy, a named insured shall be the company or corporation named on the declaration page of an automobile insurance policy and any officer, director or stock holder of that company or corporation.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1827 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1827** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE CONCURRENT RESOLUTION 270
ON SECOND READING**

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

H.C.R. 270, Urging the United States Congress to adopt **H.R. 733** by U.S. Rep. Larry Combest of Texas and allow a maximum legal speed limit of 65 miles per hour on divided four-lane highways.

The resolution was read second time and was adopted viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3127

Senator Sims called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 3127** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 3127** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sims, Chairman; Ratliff, Bivins, Montford and Brown.

(President in Chair)

HOUSE BILL 1446 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1446, Relating to the creation, administration, powers, duties, operation, financing, and dissolution of the Houston Downtown Management District and the power of certain entities to contract with the district.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Amend **H.B. 1446**, by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. CREATION; LEGISLATIVE DECLARATION. (a) There is created and established a special district, to be known as Houston Downtown Management District, that is a governmental agency, a body politic and corporate, and a political subdivision of the state.

(b) The name of the district may be changed by resolution of the board.

(c) The creation of the district is declared to be essential to the accomplishment of the purposes of Article III, Section 52; Article XVI, Section 59; and Article III, Section 52-a, of the Texas Constitution, and to the accomplishment of the other public purposes stated in this Act.

(d) The legislature finds, determines, and declares that the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the downtown area of Houston and in the Houston metropolitan area. It is the legislature's intent that the creation of the district and this legislation not be interpreted to relieve the city of Houston from providing the present level of services to the area included within the district or to release the city of Houston from the obligations it has to provide municipal service to that area. The district is created to supplement and not supplant the municipal services of the city.

SECTION 2. BOUNDARIES. The boundaries of the district are as follows: 705 acres, more or less, in the J. Austin Survey, Abstract 1, the J.S. Holman Survey, Abstract 323, the O. Smith Survey, Abstract 696, and the J. Wells Survey, Abstract 832, Harris County, Texas more particularly described as follows:

BEGINNING at the intersection of the center line of the right of way of Commerce Avenue with the center line of the right of way of Austin Street,

Thence in a southwesterly direction with the center line of the right of way of Austin street to the intersection with the center line of the right of way of Capitol Avenue,

Thence in a southeasterly direction with the center line of the right of way of Capitol Avenue to the intersection with the center line of the right of way of Chartres Street,

Thence in a southwesterly direction with the center line of the right of way of Chartres Street to the intersection with the center line of the right of way of Clay Avenue,

Thence in a northwesterly direction with the center line of the right of way of Clay Avenue to the intersection with the center line of the right of way of Caroline Street,

Thence in a southwesterly direction with the center line of the right of way of Caroline Street to the intersection with the center line of the right of way of Pierce Avenue,

Thence in a northwesterly direction with the center line of the right of way of Pierce Avenue to the intersection with the center line of the right of way Bagby Street,

Thence in a northeasterly direction with the center line of the right of way of Bagby Street to the intersection with a southerly projection of the west line of the right of way of Heiner Street,

Thence in a northerly direction with the west line of the right of way of Heiner Street and southerly and northerly projections thereof to the intersection with the center line of the right of way of W. Dallas Street,

Thence in a westerly direction with the center line of the right of way of W. Dallas Street to the intersection with a southerly projection of the west line of the right of way of Heiner Street,

Thence in a northerly direction with the west line of the right of way of Heiner Street and southerly and northerly projections thereof to the intersection with the center line of the right of way of Allen Parkway,

Thence in an easterly direction with the center line of the right of way of Allen Parkway to the intersection with a southerly projection of the center line of the right of way of Sabine Street,

Thence in a northerly direction with a southerly projection of the center line of the right of way of Sabine Street and then with the center line of the right of way of Sabine Street to the intersection with the north right of way line of Memorial Drive,

Thence in an easterly direction with the north right of way line of Memorial Drive to the intersection with the west right of way line of Interstate Highway 45,

Thence in a northeasterly direction with the west right of way line of Interstate Highway 45 to the intersection with the center line of the right of way of Franklin Avenue,

Thence in an easterly direction with the center line of the right of way of Franklin Avenue to the intersection with a southerly projection of the center line of the northbound ramp to Interstate Highway 10, a continuation of Louisiana Street,

Thence in a northerly direction with the center line of the right of way of the northbound ramp to Interstate Highway 10 and the southerly projection thereof, to the intersection with the center line of the Southern Pacific Rail Road's "Main Passenger Line" right of way,

Thence in an easterly direction with the center line of the Southern Pacific Rail Road's "Main Passenger Line" right of way to the intersection with the center line of the right of way of North San Jacinto Street,

Thence in a southerly direction with the center line of the right of way of North San Jacinto Street to the intersection with the center line of the right of way of Commerce Avenue,

Thence in a southeasterly direction with the center line of the right of way of Commerce Avenue to The Point of Beginning, containing 705 acres, more or less, including, without limitation, all air space above and all subsurface below said property.

SECTION 3. FINDINGS RELATING TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, it in no way affects the organization, existence, and validity of the district, the right of the district to issue any type of bonds or refunding bonds for the purposes for which the district is created or to pay the principal of and interest on the bonds, or the right of the district to levy and collect assessments or taxes, or in any other manner affects the legality or operation of the district or its governing body.

SECTION 4. FINDING OF BENEFIT AND PUBLIC PURPOSE. (a) The legislature finds that all of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished and the services to be provided by the district under powers conferred by Article III, Section 52; Article XVI, Section 59; and Article III, Section 52-a, of the Texas Constitution, and other powers granted under this Act, and that the district is created to serve a public use and benefit.

(b) The legislature finds that the creation of the district is essential to further the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment and the development or expansion of transportation and commerce, is in the public interest, and that the district will promote the health, safety, and general welfare of residents, employers, employees, and consumers in the district, and the general public. The district will provide needed funding for the Houston downtown area to preserve, maintain, and enhance the economic health and vitality of the area as a community and business center. The present and prospective traffic congestion in the district, the need for traffic control and the safety of pedestrians, and the limited availability of funds require the promotion and development of public transportation and pedestrian facilities and systems by new and alternative means, and the district will serve the public purpose of securing expanded and improved transportation and pedestrian facilities and systems. The public transportation and pedestrian facilities and systems promoted and developed by the district will be attractive, safe, and convenient, and will benefit not only the land and property in the district, but also the employees, employers, and consumers of the district and the general public. The district will further promote the health, safety, welfare, morals, convenience, and enjoyment of the public by landscaping and developing certain areas within the district, which are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty. The district will not act as the agent or instrumentality of any private interests even though many private interests will be benefited by the district, as will the general public.

(c) This Act shall be liberally construed in conformity with the legislative findings and purposes stated in this Act.

SECTION 5. BOARD OF DIRECTORS. (a) The district is governed by a board of 30 directors who shall serve for staggered terms of four years.

(b) At the time this Act takes effect, the following persons shall constitute the initial board of the district for the terms indicated in Subsection (d) of this section:

Position No. 1	Richard D. Kinder;
Position No. 2	A. Robert Abboud;
Position No. 3	C. Richard Everett;
Position No. 4	Richard G. Knight;
Position No. 5	James L. Dunlap;
Position No. 6	Ulrich E. Porzig;
Position No. 7	William D. Stevens;
Position No. 8	John T. Cater;
Position No. 9	Marvin G. Marshall;
Position No. 10	Omar A. Sawaf;

Position No. 11	J. William Sharman, Jr.;
Position No. 12	Dennis R. Hendrix;
Position No. 13	Robert F. Dunphy;
Position No. 14	Lee E. Straus;
Position No. 15	Gerald D. Hines;
Position No. 16	Charles Miller;
Position No. 17	Lynn W. Zimmerman;
Position No. 18	Gary W. Warwick;
Position No. 19	Leon Davis;
Position No. 20	James L. Ketelsen;

(c) In addition to the directors listed under Subsection (b) of this section, the member of the state house of representatives in whose district the district is located shall appoint three persons to serve on the board. The member of the state senate in whose district the district is located shall appoint seven persons to serve on the board. The member of the house of representatives, at the time he makes the appointments, shall designate the appointees to serve in positions number 21 - 23. The senator, at the time he makes the appointments, shall designate the appointees to serve in positions number 24 - 30. If the district is located in more than one senate or house district this subsection applies only to the senator or representative in whose district a larger portion of the district is located than any other senate or house district, as applicable.

(d) Of the initial directors, the directors appointed for positions 16 - 20, 29, and 30 shall serve until June 1, 1993, the directors appointed for positions 11 - 15, 26, 27, and 28 shall serve until June 1, 1992, the directors appointed for positions 6 - 10, 23, 24, and 25 shall serve until June 1, 1991, and the directors appointed for positions 1 through 5, 21, and 22 shall serve until June 1, 1990.

(e) To be qualified to serve as a director, a person must be at least 18 years old and:

- (1) a resident of the district;
- (2) an owner of property in the district;
- (3) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district;
- (4) an owner of a beneficial interest in a trust that owns property in the district;
- (5) an agent, employee, or tenant of one of the persons covered by Subdivisions (2)-(4) of this subsection; or
- (6) determined by the mayor to represent the interests of the downtown community.

(f) Except for directors appointed under Subsections (h) of this section, succeeding directors shall be selected as provided herein. The existing board of directors shall make nominations for persons to serve on the board in positions 1 - 20 and submit such recommendations to the mayor of the city of Houston. The mayor shall review the nominations, and shall appoint subsequent directors from the list of nominations submitted by the board. If the mayor is not satisfied with the nominations submitted by the board, the board shall submit additional nominations for consideration. The member of the house of representatives in whose district the larger part of the Houston Downtown Management District is located shall appoint succeeding directors for positions 21 - 23. The member of the state senate in whose senatorial district the larger part of the Houston Downtown Management District is located shall appoint succeeding directors for positions 24 - 30. Board members may serve successive terms.

The mayor, state representative or state senator, shall make appointments to the board so that the following places on the board will be occupied by persons with experience in the following areas:

Positions 1, 5, 7, 13, and 20—energy matters;
 Positions 2, 8, and 14—commercial banking;
 Positions 3, 9, and 15—real estate development;
 Positions 4, 10, and 16—finance and insurance matters;
 Positions 6, 11, 18 and 19—matters relating to retail or the provision
 of services;
 Positions 17 and 12—provision of utilities; and
 Positions 21 through 30—at-large.

(g) Except as provided by Subsection (h) of this section, a person appointed director shall serve a four-year term.

(h) The mayor may remove a director for misconduct or failure to carry out his duties upon petition by a majority of the remaining directors.

(i) A vacancy in the office of director in positions 1 - 20 shall be filled by the remaining members of the board for the unexpired term with the approval of a mayor. Vacancies in the office of director in positions 21 - 23 shall be filled by the member of the house of representatives in whose district the larger portion of the Houston Downtown Improvement District is located. Vacancies in the office of director in positions 24 - 30 shall be filled by the senator in whose district the larger portion of the Houston Downtown Improvement District is located.

(j) As soon as practicable after a director is appointed, he shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of his duties. Each director's bond must be approved by the board, and each director shall take the oath of office prescribed by the constitution for public officers. The bond and oath shall be filed with the district and retained in its records.

(k) After the directors are appointed and have qualified by executing a bond and taking the proper oath, they shall organize by electing a president, a vice-president, a secretary, and any other officers as in the judgment of the board are considered necessary.

(l) A position on the board may not be construed to be a civil office of emolument for any purpose, including those purposes described by Article XVI, Section 40, of the Texas Constitution.

(m) A director is not entitled to compensation for his position on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

(n) Fifteen directors constitute a quorum for the consideration of matters relating to the district and a concurrence of a majority of a quorum of directors is required for any official action of the district. In addition, written consent of at least 20 directors is required to authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds.

(o) A person who qualifies to serve on the board under Subsection (d) of this section shall be qualified to serve as a director and participate in all votes pertaining to the business of the district regardless of any statutory provision to the contrary. A director who has a beneficial interest in a business entity that will receive a pecuniary benefit from an action of the board may participate in discussion and vote on that action if a majority of the board has a similar interest in the same action or if all other similar business entities in the district will receive a similar pecuniary benefit. An employee of a public entity may serve on the board of directors of the district, but that public employee may not participate in the discussion of or vote on any matter regarding assessments on or contracts with the public entity of which the director is an employee.

SECTION 6. DEFINITIONS. In this Act:

(1) "Board" means the district's board of directors.

(2) "Bonds" means any type of interest-bearing obligation, including, without limitation, a bond, note, bond anticipation note, certificate of participation, lease, contract, or other evidence of indebtedness.

- (3) "City" means the city of Houston.
- (4) "Commission" means the Texas Water Commission.
- (5) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit of which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, that may include black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; or

(B) a sole proprietorship for the purpose of making a profit that is 100 percent owned, operated, and controlled by one or more persons described by Paragraph (A) of this subdivision; or

(C) a partnership for the purpose of making a profit in which 51 percent of the assets and interest in the partnership must be owned by one or more persons described by Paragraph (A) of this subdivision, and minority or women partners must have a proportionate interest in the control, operation, and management of the partnership affairs; or

(D) a joint venture between minority and women's group members for the purpose of making a profit in which the minority participation is based on the sharing of real economic interest and must include equally proportionate control over management, interest in capital, and interest earnings. If majority group members own or control debt securities, leasehold interest, management contracts, or other interests, the joint venture shall not be designated a disadvantaged business; or

(E) a supplier contract between persons described in Paragraph (A) of this subdivision and a prime contractor in which the disadvantaged business is directly involved for the manufacture or distribution of the supplies or materials or otherwise for warehousing and shipping the supplies.

- (6) "District" means the Houston Downtown Management District.

(7) "Mass transit" means transportation of passengers and hand-carried packages and/or baggage of those passengers by means of motorbus, trolley, coach, street railway, rail, suspended overhead rail, elevated railway, subway, people mover, automobile, or any other surface, overhead, or underground transportation or any combination of the foregoing, and includes stations or terminals and public parking facilities, and facilities incidental to or related to any of the foregoing, including commercial or shopping areas. No mass transit system shall be financed by the district without approval of the city council of the city of Houston.

(8) "System" means all real and personal property owned or held by the district for mass transit purposes, including land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment, and facilities including vehicle parking areas and facilities, and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars, and buses, control houses, signals and land, facilities, and equipment for the protection and environmental enhancement of all such facilities.

SECTION 7. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including those conferred by Chapter 54, Water Code. The district may contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54, Water Code. In addition, the district has all the rights, powers, privileges, authority, and functions of road districts

and road utility districts created pursuant to Article III, Section 52, of the Texas Constitution, including the power to levy ad valorem taxes for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof. This power includes the power to levy ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided in Article III, Section 52, and Article III, Section 52-a, of the Texas Constitution. The district also has those powers conferred by Chapter 13, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 6674r-1, Vernon's Texas Civil Statutes), together with the additional rights, privileges, authority, and functions contained in that Act.

(b) If any provision of the general law is in conflict or inconsistent with this Act, this Act prevails. Any general law not in conflict or inconsistent with this Act is adopted and incorporated by reference.

SECTION 8. SPECIFIC POWERS. (a) The district shall have all the powers necessary or convenient to carry out and effect the purposes and provisions of this Act, including the powers granted in this section.

(b) The district has perpetual succession.

(c) The district may sue and be sued in courts of competent jurisdiction, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving supersedeas or cost bond.

(d) The district may incur liabilities, borrow money on terms and conditions the board determines, and issue notes, bonds or other obligations.

(e) The district may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease, or dispose of real and personal property, and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers pursuant to this Act.

(f) The district may acquire, construct, complete, develop, own, operate, and maintain permanent improvements and provide services inside and outside its boundaries. With the consent of the city, the district is entitled to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of, any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other property, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of the system, or to have those things done at the district's sole expense. The district may not proceed with any action to change, alter, or damage the property or facilities of the state, its municipal corporations, agencies, or political subdivisions or of owners rendering public services, or that will disrupt those services being provided by others, or to otherwise inconvenience the owners of that property or those facilities, without having first obtained the written consent of those owners. If the owners of the property or facilities desire to handle the relocation, raising, change in the grade of, or alteration in the construction of the property or facilities with their own personnel, or have the work done by contractors of their own choosing, the district may enter agreements with the owners providing for the necessary relocations, changes, or alterations of the property or facilities by the owners or contractors and the reimbursement by the district to those owners of the costs incurred by the owners in making those relocations, changes, or alterations or having them accomplished by contractors.

(g) If the district, in exercising any of the powers conferred by this Act, requires the relocation, adjustment, raising, lowering, rerouting, or changing the grade of, or altering the construction of any street, alley, highway, overpass, underpass, or road, any railroad tract, bridge, or other facilities or property, any electric lines, conduits, or other facilities or property, any telephone or telegraph lines, conduits, or other facilities or property, any gas transmission or distribution pipes, pipelines,

mains, or other facilities or property, any water, sanitary sewer or storm sewer pipes, pipelines, mains, or other facilities, or property, any cable television lines, cables, conduits, or other facilities or property, or any other pipelines and any facilities or properties relating to those pipelines, those relocations, adjustments, raising, lowering, rerouting, or changing of grade, or altering of construction must be accomplished at the sole cost and expense of the district, and damages that are suffered by the owners of the property or facilities shall be borne by the district.

(h) The district may enter into agreements with a person or entity, public or private, for the joint use of their respective facilities, installations, and property.

(i) The district may establish and maintain reasonable and nondiscriminatory rates, fares, tolls, charges, rents, or other fees or compensation for the use of the improvements constructed, operated, or maintained by the district.

(j) The district may enter contracts, leases, and agreements with, and accept grants and loans from, the United States and its departments and agencies, the state and its agencies, counties, municipalities, and political subdivisions, public or private corporations, including a nonprofit corporation created under a resolution of the board, and other persons, and may perform all acts necessary for the full exercise of the powers vested in it on terms and conditions and for the term the board may determine to be advisable. The district may acquire property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement.

(k) The district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or property that are not needed for, or, in the case of leases, that are not inconsistent with, the efficient operation and maintenance of the district's improvements. The district may sell, lease, or otherwise dispose of any surplus material or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(l) The district may lease projects or any part of a project to, or contract for the use or operation of the projects or any part of a project by, any operator.

(m) The district may conduct hearings and take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to carry out the purposes of this Act.

(n) The district may procure and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board.

(o) The district may do any thing necessary, convenient, or desirable to carry out the powers expressly granted or implied by this Act.

(p) The responsibility for the management, operation, and control of the property belonging to the district is vested in the board.

(q) The board may:

(1) employ all persons, firms, partnerships, or corporations considered necessary by the board for the conduct of the affairs of the district, including a general manager, bookkeepers, auditors, engineers, attorneys, financial advisers, peace or traffic control officers, architects, and operating or management companies and prescribe the duties, tenure, and compensation of each;

(2) dismiss employees;

(3) adopt a seal for the district;

(4) invest funds of the district in any investments authorized by the Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes), and provide, by resolution, that an authorized representative manage the district's funds and invest and reinvest the funds of the district on terms the board considers advisable;

(5) establish a fiscal year for the district;

(6) establish a complete system of accounts for the district and each year shall have prepared an audit of the district's affairs, which shall be open to

public inspection, by an independent certified public accountant or a firm of independent certified public accountants; and

(7) designate one or more banks to serve as the depository bank or banks.

(r) Funds of the district shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the district's bonds or notes. To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they must be secured in the manner provided by law for the security of funds of counties. The board, by resolution, may authorize a designated representative to supervise the substitution of securities pledged to secure the district's funds.

(s) The board may adopt and enforce reasonable rules and regulations governing the administration of the district and its programs and projects.

(t) The district is a "unit of government" for purposes of Chapter 101, Civil Practice and Remedies Code (Texas Tort Claims Act), and operations of the district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

(u) The district may not exercise the power of eminent domain.

SECTION 9. POWERS AND DUTIES RELATING TO ASSESSMENTS.

(a) In addition to the powers provided by Sections 7 and 8 of this Act, the board may undertake improvement projects and/or services that confer a special benefit on all or a definable part of the district. The board may levy and collect special assessments on property in that area, based on the benefit conferred by the improvement project or services, to pay all or part of the cost of the project and/or services. If the board determines that there is a benefit to the district, the district may provide improvements and/or services to an area outside the boundaries of the district. Each improvement project or service authorized by this Act is found and declared to carry out a public purpose.

(b) An improvement project or services provided by the district may include the construction, acquisition, improvement, relocation, operation, maintenance, or provision of:

(1) landscaping; lighting, banners, and signs; streets and/or sidewalks; pedestrian skywalks, crosswalks, and/or tunnels; drainage improvements; pedestrian malls; solid waste, water, sewer, and/or power facilities, including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, bayous, ponds, and/or recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus terminals, heliports, and mass transit systems; and the cost of any demolition in connection with providing any of the improvement projects;

(2) other improvements similar to those described in Subdivision (1) of this subsection;

(3) the acquisition of real property or any interest in real property in connection with an improvement, project, or services authorized by this Act, Chapter 54, Water Code, or Chapter 13, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 6674r-1, Vernon's Texas Civil Statutes);

(4) special supplemental services for advertising, economic development, promoting the area in the district, health and sanitation, public safety, maintenance, security, business recruitment, development, elimination or relief of traffic congestion, recreation, and cultural enhancement; and

(5) expenses incurred in the establishment, administration, maintenance, and operation of the district or any of its improvements, projects, or services.

(c) An improvement project on two or more streets or two or more types of improvements may be included in one proceeding and financed as one improvement project.

(d) Services or improvement projects may be financed under this Act after hearing notice given as required by this section and a public hearing by the board on the advisability of the improvements and/or services and the proposed assessments.

(e) The board of the district may not finance services and/or improvement projects under this Act unless a written petition has been filed with the board requesting those improvements or services signed by the owners of 50 percent or more of the assessed value of the property in the district based on the most recent certified county property tax rolls or the owners of 50 percent or more of the surface area of the district, excluding roads, streets, highways, and utility rights-of-way, other public areas and any other property exempt from assessment pursuant to Subsection (n) or (o) of this section, based on the most recent certified county property tax rolls.

(f) Notice of the hearing shall be given in a newspaper with general circulation in the county in which the district is located. The final publication must be made not later than the 30th day before the date of the hearing. The notice shall include the following information:

- (1) the time and place of the hearing;
- (2) the general nature of the proposed improvement project or services;
- (3) the estimated cost of the improvement that may include interest during construction and associated financing costs; and
- (4) the proposed method of assessment.

(g) Written notice containing the information required by Subsection (f) of this section shall be mailed by certified mail, return receipt requested, not later than the 30th day before the date of the hearing. The notice shall be mailed to each property owner in the district who will be subject to assessment at the current address of the property to be assessed as reflected on the tax rolls.

(h) The board may appoint a hearings examiner to conduct the hearing, or any other hearing called by the board including a hearing required by Chapter 957, Acts of the 70th Legislature, Regular Session, 1987 (Article 1269j-4.11, Vernon's Texas Civil Statutes), who may be an employee of the district or a member of the district's board. The hearing shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The hearing on the services and/or improvement project, whether conducted by the board or a hearings examiner, may be adjourned from time to time. At the conclusion of the hearing, the board shall make findings by resolution or order relating to the advisability of the improvement project and/or services, the nature of the improvement project and/or services, the estimated cost, the area benefited, the method of assessment, and the method and time for payment of the assessment. If a hearings examiner is appointed to conduct the hearing, after conclusion of the hearing, the hearings examiner shall file with the board a report stating his findings and conclusions.

(j) The area of the district to be assessed according to the findings of the board may be the entire district or any part of the district and may be less than the area proposed in the notice of the hearing, but the area to be assessed may not include property that is not within the district boundaries at the time of the hearing unless there is an additional hearing, preceded by the required notice. However, the owner of improvements constructed or land annexed to the district after the district has imposed assessments may waive the right to notice and an assessment hearing and may agree to the imposition and payment of assessments at an agreed rate for improvements constructed or land annexed to the district.

(k) At the hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearings examiner's report, the board shall hear and rule on all objections to each proposed assessment. The board may amend proposed assessments for any parcel. After all objections have been heard and action has been taken with regard to those objections, the board, by order or resolution, shall levy the assessments as special assessments on the property, and shall specify the method of payment of the assessments and may provide that those assessments be paid in periodic installments, including interest. A person against whom an assessment is imposed under the board's order may appeal that assessment to a district court in the county in which the district is located in the manner provided for appeal under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The review by the district court under this section is by trial de novo as that term is used in the appeal of cases from justice court to county court. Periodic installments shall meet annual costs for services and improvements as provided by Subsection (l) of this section and shall continue for the number of years required to retire indebtedness or pay for the services to be rendered. The board may provide interest charges or penalties for failure to make timely payment and also may levy an amount to cover delinquencies and expenses of collection. If assessments are levied for more than one service and/or improvement project, the board may provide that assessments collected for one service and/or improvement project may be borrowed to be used for another service and/or improvement project. The board shall establish a procedure for the distribution or use of assessments, if any, in excess of those needed to finance the services or improvement project for which those assessments were collected.

(l) The portion of the cost of an improvement project and/or services to be assessed against the property in the district shall be apportioned by the board based on the special benefits accruing to the property because of the improvement project and/or services. The cost may be assessed:

(1) equally per front foot or per square foot of land area against all property in the district;

(2) against property according to the value of the property as determined by the board, with or without regard to structures or other improvements on the property; or

(3) on the basis of any other reasonable assessment plan that results in imposing fair and equitable shares of the cost on property similarly benefited.

(m) Payment of assessments by cities, counties, political subdivisions, and organizations exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, if any, shall be established by contract. Cities, counties, and political subdivisions may contract with the district under terms and conditions as those entities consider advisable to provide for the payment of assessments.

(n) Property that comprises three or more acres, separated only by streets or public rights-of-way, that was used primarily for recreational, park, or scenic use during the immediately preceding calendar year, and on which money has been spent for landscaping at any time in an amount that is equal to the lesser of five years of proposed district assessments on the property or the proposed amount of the district's assessments on the property pursuant to a plan of assessment adopted by the board is exempt from assessment by the district, except with consent of the owner of the property. Property is exempt from assessment by the district pursuant to this section during the period that the property is used primarily for recreational, park, or scenic use in accordance with this section. The fact that property is exempt from assessment by the district may not be construed to be an express or implied dedication of the property to the public for recreational, park, scenic, or other public use or constitute evidence of an intent by the owner of the property to make or offer to make that type of dedication, and does not affect the status of the property as

private property. If the district levies ad valorem taxes, property that qualifies for an exemption from assessment pursuant to this section must be taxed by the district at its appraised value for recreational, park, or scenic use determined in accordance with Subchapter F, Chapter 23, Tax Code. For the purposes of this subsection, the term "recreational, park, or scenic use" has the meaning set forth in Subchapter F, Chapter 23, Tax Code.

(o) The board may exempt residential property from all or a part of the assessments levied on that property or determine that residential property will not be benefited by the proposed improvement project or services. Single family detached residential property in the district is exempt from assessment under this Act.

(p) If the total cost of an improvement project and/or services is determined, the board shall levy the assessments against each parcel of land against which an assessment may be levied in the district. With regard to an assessment for services, the board may levy an annual assessment that may be lower but not higher than the initial assessment. The board shall have an assessment roll prepared showing the assessments against each property and the board's basis for the assessment. The assessment roll shall be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

(q) Assessments bear interest at a rate specified by the board that may not exceed the interest rate permitted by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). Interest on an assessment between the effective date of the order or resolution levying the assessment and the date the first installment and any related penalty is payable shall be added to the first installment. The interest or penalties on all unpaid installments shall be added to each subsequent installment until paid. An assessment or any reassessment and any interest and penalties on that assessment or reassessment is a lien against the property until it is paid. The owner of any property assessed may pay at any time the entire assessment against any lot or parcel with accrued interest to the date of the payment.

(r) After notice and hearing in the manner required for original assessments, the board may make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement project and/or services or to cover delinquencies or costs of collection.

(s) After determination of an assessment, a property owner may appeal the assessment to the board. The property owner must file a notice of appeal with the board not later than the 30th day after the date that the assessment is adopted. The board shall set a date to hear the appeal. The property owner may appeal the board's decision on the assessment to a court of competent jurisdiction. The property owner must file notice of the appeal with the court of competent jurisdiction not later than the 30th day after the date of the board's final decision with respect to the assessment. Failure to file either of the notices in the time required by this subsection results in a loss of the right to appeal the assessment.

(t) If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the board, or determined to be invalid by the board, the board may make a reassessment or new assessment of the parcel.

SECTION 10. FUNDS AVAILABLE FOR PAYMENT OF PROJECTS AND SERVICES. (a) The cost of any improvement project and/or services, including interest during construction and costs of issuance of bonds, may be paid from general or available funds, assessments, or the proceeds of bonds payable from taxes, revenues, assessments, impact fees, grants, gifts, contracts, leases, or any combination of those funds.

(b) During the progress of an improvement project or services, the board may issue temporary notes to pay the costs of the improvement project and/or services and issue bonds on completion.

(c) The costs of more than one improvement project and/or service may be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

SECTION 11. BONDS. (a) For the payment of all or part of the costs of an improvement project or services, the board may issue bonds in one or more series payable from and secured by ad valorem taxes, assessments, impact fees, revenues, grants, gifts, contracts, leases, or any combination of those funds. Bonds may be liens on all or part of the revenue derived from improvements authorized under this Act, including installment payments of special assessments or from any other source pledged to their payment.

(b) Bonds may be issued to mature serially or otherwise not more than 40 years from their date of issue. Provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms or conditions that may be stated in the order or resolution authorizing the issuance of the bonds.

(c) The bonds are negotiable instruments within the meaning and for purposes of the Business & Commerce Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, shall be executed, may be made redeemable before maturity, may be issued in the form, denominations, and manner, and under the terms, conditions, and details, may be sold in the manner, at the price, and under the terms, and shall bear interest at the rates, determined and provided in the order or resolution authorizing the issuance of the bonds. Bonds may bear interest and may be issued in accordance with Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(d) If provided by the bond order or resolution, the proceeds from the sale of bonds may be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds, to administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, and to create any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, in securities in the manner provided by the bond order or resolution.

(e) The board may pledge all or part of the income or assessments from improvement projects financed under this Act or from any other source, to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged income shall be set and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the order or resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and to pay operation, maintenance, and other expenses in connection with the improvement projects authorized under this Act.

(f) Bonds may be additionally secured by a mortgage or deed of trust on real property relating to the facilities authorized under this Act owned or to be acquired by the district and by chattel mortgages, liens, or security interests on personal property appurtenant to that real property. The board may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrance to evidence the indebtedness.

(g) The board may pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source.

(h) Bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds under terms or conditions determined by order or resolution of the board. Refunding bonds may be issued in amounts necessary to pay the principal of and interest and redemption premium, if any, on bonds to be refunded, at maturity or on any redemption date, and to provide for the payment of costs incurred in connection with the refunding. The refunding bonds shall be issued in the manner provided by this Act for other bonds.

(i) The district shall submit bonds and the appropriate proceedings authorizing their issuance to the attorney general for examination. If the bonds recite that they are secured by a pledge of assessments, impact fees, revenues, or rentals from a contract or lease, the district also shall submit to the attorney general a copy of the assessment procedures, impact fee procedures, contract, or lease and the proceedings relating to it. If the attorney general finds that the bonds have been authorized and any assessment, contract, or lease has been made in accordance with law, he shall approve the bonds and the assessment, impact fee, contract, or lease, and the bonds shall be registered by the comptroller of public accounts. After approval and registration, the bonds and any assessment, impact fee, contract, or lease relating to them are incontestable in any court or other forum for any reason and are valid and binding obligations for all purposes in accordance with their terms.

(j) District bonds are legal and authorized investments for banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and agencies, subdivisions, and instrumentalities of the state, including counties, cities, towns, villages, school districts, and other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for deposits of counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant to the bonds.

SECTION 12. IMPOSITION OF IMPACT FEES. The board may impose impact fees to pay for the cost of providing improvements that the district is authorized to provide pursuant to this Act, including mass transit systems. However, impact fees for mass transit systems may not be imposed without approval of the city council of the city of Houston. The board may provide for impact fees to be paid in periodic installments and may include an interest charge from the date the impact fees are imposed to the date the impact fees are paid. The board may provide interest charges and/or penalties for failure to make timely payment and also may levy an amount to cover delinquencies and expenses of collection. Impact fees shall be adopted pursuant to the procedures provided by Chapter 957, Acts of the 70th Legislature, Regular Session, 1987 (Article 1269j-4.11, Vernon's Texas Civil Statutes). A municipality, county, or political subdivision is exempt from impact fees imposed by the district unless the municipality, county, or political subdivision consents to payment of the fees by official act of its governing body. Payment of impact fees, if any, by a municipality, county, or political subdivision must be established by contract. A municipality, county, or political subdivision may contract with the district under terms and conditions the governmental entity considers advisable to provide for payment of impact fees.

SECTION 13. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS. (a) Contracts for more than \$10,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property, except real property, shall be entered only after competitive bids. Notice of the contract for the purpose of soliciting bids shall be published once a

week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication of notice must be not later than the 15th day before the date set for receiving bids. The board may adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement in the event of emergency, in the event the needed materials are available from only one source, in the event that in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement, or in the event that, after solicitation, it is ascertained that there will be only one bidder. This subsection does not apply to contracts for services.

(b) If the estimated amount of a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is more than \$5,000 but less than \$25,000, or for a duration of more than two years, competitive bids shall be asked from at least three persons.

SECTION 14. CITY APPROVAL. The district must obtain the approval of the city council for bond issues for an improvement project and the plans and specifications of an improvement project financed by the bond issue. The district may obtain approval from the city council of the city of a capital improvements budget, for a period not to exceed five years. If the district obtains approval of a capital improvements budget, it may finance the capital improvements and issue bonds specified in the budget without further approval from the city, the city's directors of public works, or the department of planning. However, the city's directors of public works and department of planning must approve the plans and specifications of any improvement project financed by the issuance of bonds. The district must obtain approval from the city's city council, the city's director of public works, and the city's department of planning of the plans and specifications of any improvement project that involves the use of the rights-of-way of streets, roads, or highways or the use of municipal land or any easements granted by the city. The city shall never be obligated to pay any bonds, notes, or other obligations of the district, except as provided by Section 20(c) of this Act.

SECTION 15. EXCLUDING TERRITORY. (a) At any time during which the district has no outstanding bonds, the board on its own motion may call a hearing on the question of the exclusion of land from the district in the manner provided by Chapter 54, Water Code, if the exclusions are practicable, just, or desirable.

(b) The board must call a hearing on the exclusion of land or other property from the district on the written petition of a landowner or property owner in the district filed with the secretary of the board before the issuance of bonds.

SECTION 16. ELECTIONS. (a) A bond election, maintenance tax election, and any other election held in the district may be held at the same time and in conjunction with any other election.

(b) Elections held in the district are not required to be held on a uniform election date specified in Section 41.001, Election Code, and an election shall be called and held as provided by the appropriate provisions of Chapter 54, Water Code.

(c) The board may call an election for the purpose of voting on any measure.

(d) The board may not call a bond election unless a written petition requesting an election signed by the owners of 50 percent or more of the assessed value of the property in the district based on the most recent certified county property tax rolls at the time or the owners of 50 percent or more of the surface area of the district, excluding roads, streets, highways, utility rights-of-way, other public areas, and other property exempt from assessment pursuant to Sections 9(n) and (o) of this Act

based on the most recent certified county property tax rolls, has been filed with the board.

(e) Bonds payable in whole or in part from taxes or assessments may not be issued unless approved by a majority, or any larger percentage if required by the constitution, of the qualified voters in the district voting at an election held for that purpose. The bonds must be approved by a majority of the qualified voters of the district voting at the election or by a larger number of voters as required by the constitution for certain purposes. Bonds payable from sources other than taxes may be issued by the board and assessments may be levied without approval at an election.

SECTION 17. BOND APPROVAL. The district must obtain approval of the commission as provided by Chapter 54, Water Code, if it issues bonds to provide water, sewage, or drainage facilities. Except as expressly provided by this section and Section 5 of this Act, the district is not subject to the jurisdiction of the commission.

SECTION 18. ANNEXATION. The district may annex land as provided by Chapter 54, Water Code, subject to the approval of the governing body of the city.

SECTION 19. CONTRACTS WITH DISTRICT. Without further authorization, a state agency, city, county, other political subdivision, corporation, individual, or other entity may contract with the district to carry out the purposes of this Act, notwithstanding any other law or charter provisions to the contrary.

SECTION 20. DISSOLUTION. (a) The board of the district by majority vote may dissolve the district at any time. However, the district may not be dissolved by the board if the district has outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

(b) The board shall dissolve the district on written petition filed with the board by the owners of 75 percent or more of the assessed value of the property in the district based on the most recent certified county property tax rolls or the owners of 75 percent or more of the surface area of the district, excluding roads, streets, highways, utility rights-of-way, other public areas, and other property exempt from assessment pursuant to Sections 9(n) and (o) of this Act, based on the most recent certified county property tax rolls. However, the district may not be dissolved by the board if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

(c) The city's city council may, by a vote of not less than two-thirds of its membership, adopt an ordinance dissolving the district. Provided, however, the district may not be dissolved by the city if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SECTION 21. NOTICE AND CONSENT. The legislature finds that proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor of Texas, who has submitted the notice and Act to the Texas Water Commission. Also the legislature finds that the commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time. The general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with, and all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 22. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Washington and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 504 ON SECOND READING**

Senator Brown moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 504, Relating to the sale of certain mixtures of gasoline and alcohol; providing penalties.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Lyon.

Absent: Dickson, Glasgow, Johnson, McFarland, Montford, Parker, Uribe.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Amend **C.S.H.B. 504** by deleting Section 11 of the bill and renumbering subsequent sections accordingly.

The amendment was read.

POINT OF ORDER

Senator Lyon raised a point of order that the amendment was not germane to the bill as engrossed by the House.

The President sustained the point of order.

**COMMITTEE SUBSTITUTE
HOUSE BILL 504 RECOMMITTED**

On motion of Senator Brown and by unanimous consent, **C.S.H.B. 504** was recommitted to the Committee on Natural Resources.

HONORARY PAGE PRESENTED

Senator Brooks introduced a special Honorary Page, Carlos Zaffirini, Jr.

Carlos, son of Senator Zaffirini, being exempt from first-grade finals, is present today to serve as an Honorary Page.

The Senate extended appreciation to Carlos for his assistance.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1232 ON SECOND READING**

Senator Harris moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 1232, Relating to the regulation and licensing of entities who operate facilities for greyhound racing, horse racing, or training greyhounds or horses for racing.

The motion prevailed by the following vote: Yeas 23, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Caperton, Dickson, Edwards, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brown, Green, Haley, Montford, Parmer, Washington.

Absent: Carriker, Glasgow.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 1232 as follows:

(1) Strike SECTION 2 of the bill and renumber the subsequent sections appropriately.

(2) Amend SECTION 8 of the bill, amending Sec. 3.07(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), by striking Subsection (a) and substituting the following:

(a) Each horse race or greyhound race meeting shall be supervised by three stewards approved by the commission for horse racing ~~[from a list of qualified nominees submitted by the association]~~ or by three judges approved by the commission for greyhound racing ~~[appointed by the commission]~~. The commission shall compensate each of the stewards or judges who supervises a [horse] race meeting. ~~[The commission shall also compensate one of the judges who supervises a greyhound race meeting; the other judges at such a race meeting shall be compensated by the association.]~~ For each race meeting, the commission shall also appoint ~~[employ]~~ a state veterinarian and all other racetrack officials ~~[who shall be compensated by the appropriate association]~~. The stewards, judges, veterinarians, and other racetrack officials are independent contractors and are not considered state employees for any purpose. The commission by rule shall determine how the veterinarian and other racetrack officials will be compensated. The commission may impose a fee on an association to offset the costs of compensating the racetrack officials who supervise racing for that association. The amount of the fee must be reasonable in relation to the actual costs incurred by the commission in appointing, training, and compensating the racetrack officials.

(3) Add a new SECTION appropriately numbered, to read as follows:

SECTION ____ Section 3.11, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.11. COOPERATION WITH PEACE OFFICERS. (a) Investigators employed by or acting under the authority of the commission are peace officers and may exercise all authority given by law to peace officers in enforcing the Act and the rules of the commission.

(b) The commission shall cooperate with all district attorneys, criminal district attorneys, the Department of Public Safety, the attorney general, and all peace officers in enforcing this Act. Under its authority to conduct criminal history information record checks under Section 5.04 of this Act, the commission shall maintain and exchange pertinent intelligence data with other states and agencies.

(4) Amend SECTION 15 of the bill, amending Sec. 5.01, Texas Racing Act (Article 179e, Vernon's Civil Statutes), by adding Subsection (d) to read as follows:

(d) The operation of a racetrack and the participation in racing are privileges, not rights, granted only by the commission by license and subject to the conditions set by the commission.

(5) Amend SECTION 16 of the bill, amending Sec. 5.02, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), by striking Subsection (a) and substituting the following:

Sec. 5.02. JUDICIAL REVIEW. (a) Judicial review of an order of the commission ~~[refusing to issue an original or renewal racetrack license or revoking or suspending a racetrack license]~~ is under the substantial evidence rule. ~~[Judicial review of an order respecting any other license is by trial de novo.]~~

(6) Amend SECTION 18 of the bill, amending Sec. 6.02(d), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), by striking Subsection (d) and substituting the following:

(d) A class 3 racetrack is a racetrack operated by a county or a nonprofit fair under Article 12 of this Act. An association that holds a class 3 racetrack license and that conducted races in 1986 may conduct live races for a number of days not to exceed 16 days in a calendar year on the dates selected by the association, as approved by the commission.

(7) Amend SECTION 19 of the bill, amending Sec. 6.03, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), by changing "\$50 million" in Subsection (h) and in Subsection (i) to "\$40 million".

(8) Amend SECTION 22 of the bill, amending Section 6.08, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), by striking SECTION 22 in its entirety and by substituting the following:

Sec. 6.08. SPECIAL PROVISIONS RELATING TO HORSE RACING: DEDUCTIONS FROM POOL; ALLOCATIONS OF SHARES AND BREAKAGE. (a) A horse racing association shall deduct the following shares from each pari-mutuel pool:

(1) an amount equal to five percent of the pool shall be set aside for purses;

(2) an amount equal to five percent of the pool shall be set aside for the state; and

(3) an amount equal to eight percent of the pool on regular wagering and to 10 percent of the pool on multiple wagering shall be retained by the association as its commission.

(b) The commission shall adopt rules relating to the accounting, audit, and distribution of the breakage ~~[shall be sent to or collected by the commission according to the commission's rules for distribution as provided by Subsections (c) through (e) of this section].~~

(c) Ten percent of the total breakage [is to be paid to the appropriate state horse breed registry, five percent to] shall be used for the purpose of [for] reimbursement of administrative costs incurred in making distributions under this section, [and five percent to be used to participate in an organization whose purpose is to promote] for the purpose of promoting interest in horse racing and to encourage research, promotion, discussion, and interchange of ideas, information and methods relating to the racing, breeding, and marketing of racehorses in Texas and elsewhere [-], and for the purpose of providing health and related benefits for persons employed as workers on the backside of racetracks licensed under this Act, in accordance with rules adopted by the Commission.

(d) Ten percent of the total breakage is to be retained by the association to be used in stakes races for accredited Texas-bred races. The commission shall pay out the remaining 80 percent of the total breakage as follows:

(1) 40 percent of the remaining breakage is allocated to the owners of the accredited Texas-bred horses that finish first, second, or third;

(2) 40 percent is allocated to the breeders of the accredited Texas-bred horses that finish first, second, or third; and

(3) 20 percent is allocated to the owner of the stallion standing in this state at the time of conception whose Texas-bred get finish first, second, or third.

(e) ~~(d)~~ For purposes of this section:

(1) "Horse owner" means a person who is owner of record of an accredited Texas-bred horse at the time of a race;

(2) "Breeder" means a person who, according to the rules of the appropriate state horse breed registry, is the breeder of ~~[is owner of record, at the time of conception, of the mare that foaled]~~ the accredited Texas-bred horse; and

(3) "Stallion owner" means a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(f) An association may not make a deduction or withhold any percentage of a purse from the account into which the purse paid to a horse owner is deposited for membership payments, dues, assessments, or any other payments to a nonprofit organization.

(g) ~~(e)~~ The commission shall distribute the breakage to the appropriate persons as provided by this section. If the commission is unable to distribute a share of the breakage to a person who is entitled to a share, the commission shall retain that share in the Texas Racing Commission fund.

(9) Amend SECTION 27 of the bill, amending The Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) by striking Sec. 6.18 in its entirety and by substituting the following:

Sec. 6.18. TERM OF LICENSE; RESTRICTIONS ON RACETRACKS. (a) The term of an initial class 1 racetrack license issued under this article is 20 years. A license may be renewed as provided by rules adopted by the commission.

(b) The commission may impose an annual license fee on each racetrack licensee.

(c) Each racetrack facility may have only one racetrack licensee.

(d) After the commission issues a class 1 racetrack license, it may not issue new class 2 racetrack licenses for tracks to be located within a 100-mile radius of the class 1 racetrack.

(10) Amend SECTION 30 of the bill, amending Sec. 8.01(b), Texas Racing Act, (Article 179e, Vernon's Texas Civil Statutes), to read as follows:

(b) Except as otherwise provided by law, a racetrack licensee to which the commission has allocated racing days under this section is entitled to conduct racing on those days unless the licensee is determined by the commission to have violated this Act or a rule adopted under this Act and the commission reasonably determines that the licensee therefore should not be permitted to conduct racing on certain of those days.

(11) Amend SECTION 48 of the bill, Subsection (a), to strike (4) from the bill.

The amendment was read.

Senator Sims offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to C.S.H.B. 1232 in Section 6.18, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as added by Section 27 of the bill (Committee Printing, page 9, between lines 64-66) as follows:

- (1) Strike Subsection (c).
- (2) Strike "(d)" and substitute "(c)".

The amendment was read and was adopted viva voce vote.

Senator Sims offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

(1) Strike Section 6.02(c), Texas Racing Act, as amended by Section 18 of the bill (Committee Printing, page 5, lines 33-48), and substitute the following:

(c) A class 2 racetrack is a racetrack on which live racing is conducted for a number of days not to exceed 44 days in a calendar year except as otherwise provided by this section. A class 2 racetrack located at least 150 miles from a class 1 racetrack may conduct live racing for not more than 60 days in a calendar year. To ensure that an association that holds a class 2 racetrack license may conduct races on the same dates and during the same events that such a racetrack has conducted races in the past, an association that conducted horse races in 1986 that were approved by the American Quarter Horse Association or that, on the effective date of this Act, has been approved to conduct races on certain dates in 1987 by the American Quarter Horse Association or an association which historically has conducted races on certain dates or during certain events in the past is entitled to conduct races on those dates or during those events in the future. ~~[The commission may permit an association that holds a class 2 racetrack license and that is located in a national historic district to conduct horse races for more than 44 days in a calendar year.]~~

(2) Amend Section 3, Chapter 19, Acts of the 69th Legislature, 2nd Called Session, 1986, as amended by Section 47 of the bill (Committee Printing, page 14, lines 56-61), to read as follows:

Sec. 3. Notwithstanding Subsection (c) of Section 6.02 of the Texas Racing Act, the commission may permit an association that holds a class 2 racetrack license to conduct horse races on more than the maximum number of days prescribed for the racetrack under that subsection [44 days] in a calendar year before 1993 or until the date on which a class 1 racetrack opens for racing if that date is later than January 1, 1993.

The amendment was read and was adopted viva voce vote.

RECORD OF VOTES

Senators Edwards and Leedom asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Sims offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

(1) Strike Section 6.02(b), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as amended by Section 18 of the bill (Committee Printing, page 5, lines 24-32), and substitute the following:

(b) A class 1 racetrack is a racetrack on which live racing is conducted for a minimum of 45 and a maximum of 300 days in a calendar year, the number of days and the actual dates to be determined by the commission under Article 8 of this Act. ~~[A class 1 racetrack may operate only in a county with a population of not less than 750,000, according to the most recent federal census, or in a county adjacent to a county with such a population.]~~ Not more than four class 1 racetracks may be licensed and operated in this state. A class 1 racetrack may operate only as follows:

(1) in a county with a population of not less than 750,000, according to the most recent federal census;

(2) in a county adjacent to a county that meets the population requirement of Subdivision (1) of this subsection; or

(3) in any county if the applicant for the class 1 racetrack license presents evidence satisfactory to the commission of a minimum anticipated investment of \$38 million in the racetrack facility at least equal to the amount of the costs incurred in:

(A) the acquisition by purchase or lease of the site;

(B) the development and construction of all necessary land and building improvements; and

(C) capitalized carrying costs during the construction period.

(2) Strike Subsections (h) and (i), Section 6.03, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as added by Section 19 of the bill (Committee Printing, page 7, lines 10-22).

The amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 5

Amend Floor Amendment No. 1 to C.S.H.B. 1232 by adding a new Subsection (j) to Section 6.03, Texas Racing Act (Committee Printing, page 7, between lines 22 and 23), to read as follows:

(j) If the commission receives any applications that meet the requirements of this section for the operation of a class 1 racetrack in a county authorized to have such a racetrack, the commission may not reopen or extend the filing period for applications for a class 1 racetrack in that county until the commission has completed processing and has made a decision on each pending application.

The amendment was read and was adopted viva voce vote.

(Senator Glasgow in Chair)

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 6

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

Amend Section 22 by striking Sec. 6.08 (c) and substituting the following:

(c) Ten percent of the total breakage is to be paid to the appropriate state horse breed registry, five percent of which is to be used for reimbursement of administrative costs incurred in making distributions under this section, and the remaining five percent to be used for participation with organizations, foundations, or universities for the purposes of research, promotion, and exchange of information concerning the racing, breeding, and marketing of race horses in Texas

and elsewhere. The appropriate breed registry for Thoroughbred horses is the Texas Thoroughbred Breeders' Association, for Quarter horses is the Texas Quarter Horse Association, for Appaloosa horses is the Texas Appaloosa Horse Club, for Arabian horses is the Texas Arabian Breeders' Association, and for Paint horses is the Texas Paint Horse Breeders' Association.

The amendment was read.

On motion of Senator Harris, the amendment was tabled by the following vote:
Yeas 16, Nays 15.

Yeas: Armbrister, Bivins, Brown, Caperton, Carriker, Glasgow, Haley, Harris, Henderson, Krier, McFarland, Montford, Parker, Ratliff, Sims, Zaffirini.

Nays: Barrientos, Brooks, Dickson, Edwards, Green, Johnson, Leedom, Lyon, Parmer, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire.

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 7

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

Amend Section 22 by striking Sec. 6.08 (c) and substituting the following:

(c) Five [Fen] percent of the total breakage is to be paid to the appropriate state horse breed registry[, five percent] to be used for reimbursement of administrative costs incurred in making distributions under this section. The appropriate breed registry for Thoroughbred horses is the Texas Thoroughbred Breeders' Association, for Quarter horses is the Texas Quarter Horse Association, for Appaloosa horses is the Texas Appaloosa Horse Club, for Arabian horses is the Texas Arabian Breeders' Association, and for Paint horses is the Texas Paint Horse Breeders' Association. Five percent of the total breakage is to be paid to the commission to fund programs, organizations, foundations, or universities for the purposes of research, promotion, and exchange of information concerning the racing, breeding, and marketing of race horses in Texas and elsewhere. The Texas Thoroughbred Breeders' Association shall act in an advisory capacity to the commission concerning the expenditure of breakage generated by Thoroughbred horse racing. The Texas Quarter Horse Association shall act in an advisory capacity to the commission concerning the expenditure of breakage generated by Quarter horse racing. The Texas Appaloosa Horse Club shall act in an advisory capacity to the commission concerning the expenditure of breakage generated by Appaloosa horse racing. The Texas Arabian Breeders' Association shall act in advisory capacity to the commission concerning the expenditure of breakage generated by Arabian horse racing. The Texas Paint Horse Breeders' Association shall act in an advisory capacity to the commission concerning the expenditure of breakage generated by Paint horse racing. The commission shall adopt rules regarding the submission of proposals by the respective associations, and the allocation of breakage monies for the funding as set forth herein.

The amendment was read.

Senator Harris moved to table the amendment.

The motion was lost by the following vote: Yeas 14, Nays 17.

Yeas: Armbrister, Bivins, Brown, Caperton, Glasgow, Haley, Harris, Henderson, Krier, McFarland, Montford, Ratliff, Sims, Zaffirini.

Nays: Barrientos, Brooks, Carriker, Dickson, Edwards, Green, Johnson, Leedom, Lyon, Parker, Parmer, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire.

Question on the adoption of Floor Amendment No. 7, the amendment was adopted viva voce vote.

RECORD OF VOTE

Senator Sims asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Lyon offered the following amendment to Floor Amendment No. 1:
Floor Amendment No. 8

Amend Floor Amendment No. 1 to C.S.H.B. 1232, SECTION 22, line 69 of page 8 by striking Subsection (f) in its entirety, and by inserting in lieu thereof the following:

(f) An association may not make a deduction or withhold any percentage of a purse from the account into which the purse paid to a horse owner is deposited for membership payments, dues, assessments, or any other payment to a nonprofit organization except a nonprofit organization of the horse owner's choice.

The amendment was read and was adopted viva voce vote.

(President in Chair)

Senator Leedom offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 9

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

On page 11, omit section (c), lines 6-13. (Section 11.01 of the Act and Section 34 of the bill)

(This authorizes intra-track wagering, often called simulcasting. It would allow betting at one track that is closed for the season to live racing to open for receiving bets from a track in another part of the country or state.)

The amendment was read.

On motion of Senator Harris, the amendment was tabled by the following vote:
Yeas 23, Nays 8.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Lyon, McFarland, Ratliff, Santiesteban, Sims, Truan, Uribe, Whitmire, Zaffirini.

Nays: Edwards, Green, Leedom, Montford, Parker, Parmer, Tejada, Washington.

Senator Leedom offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 10

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

On page 10, omit lines 26-32. (Section 30 of the Act and Section 8.01 of the bill)

The amendment was read and was adopted viva voce vote.

Senator Leedom offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 11

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

On page 9, omit lines 58-61 and 66-68. (Section 6.18 of the Act and Section 27 of the bill)

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the amendment was withdrawn.

Senator Uribe offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 12

Amend Floor Amendment No. 1 to C.S.H.B. 1232 on page 2, line 2, by inserting the words "or greyhound race" between the words "race" and "meeting", and on line 3 by inserting the words "or greyhound race" between the words "race" and "events", and on line 4 by inserting the words "or greyhound race" between the words "race" and "meeting".

The amendment was read and was adopted viva voce vote.

Senator Uribe offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 13

Amend Floor Amendment No. 1 to C.S.H.B. 1232 on page 26, line 9, by inserting the words "and greyhound races" between the words "races" and "simulcast", and by inserting the words "and greyhound-racing track" between the words "track" and "licensees."

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 14

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

(1) On page 5 of the Committee Printing between lines 20 and 21, insert a new Section 18 to read as follows and renumber the subsequent subsections accordingly:

SECTION 18. Section 5.04 (c), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Except as otherwise provided by this subsection, the [the] criminal history record information received under this section is for the exclusive use of the commission and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or with the consent of the applicant. A record of a final conviction is not privileged or confidential under this subsection and is subject to public disclosure.

(2) On Committee Printing, Page 6, line 66 strike "section", and substitute "subsection [section]".

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 15

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

On page 6, between lines 50 and 51, insert the following:

"11. Notwithstanding any other provision of this Act, any information that would be public information if held by another governmental body, is public information if contained in the application or obtained by the commission in a review of the application."

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 16

Amend Floor Amendment No. 1 to C.S.H.B. 1232 by striking the words "the safety and" on page 6, line 51 of the Committee Printing.

The amendment was read and was adopted viva voce vote.

Senator Green offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 17

Amend Floor Amendment No. 1 to C.S.H.B. 1232 as follows:

On page 13, line 20, Section 42 of the bill (Section 18.01(A)) of the Act: Strike the numbers 2001 and insert the words 1997.

The amendment was read and was adopted viva voce vote.

Senator McFarland offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 18

Amend Floor Amendment No. 1 to C.S.H.B. 1232 by placing the following in the appropriate section(s) and renumbering accordingly:

"National historic district' means a district included in or eligible for inclusion in the National Register of Historic Places created under the National Historic Preservation Act, 16 U.S.C. Section 470 et seq.

The commission may permit an association that holds a class 2 racetrack license and that is located in a national historic district to conduct horse races for more than 44 days in a calendar year.

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1, the amendment as amended was adopted viva voce vote.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the passage of the bill to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1232 ON THIRD READING**

Senator Harris moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1232** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Glasgow, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brown, Edwards, Green, Montford, Parmer, Washington.

Absent: Caperton.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Haley, Harris, Henderson, Johnson, Krier, Leedom, McFarland, Parker, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Edwards, Glasgow, Montford, Parmer, Washington.

Absent: Caperton, Green, Lyon.

CONFERENCE COMMITTEE ON HOUSE BILL 843

Senator Whitmire called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 843** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 843** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chairman; Green, Harris, Washington and Barrientos.

HOUSE BILL 141 ON SECOND READING

Senator Brooks moved to suspend the regular order of business to take up for consideration at this time:

H.B. 141, Relating to the application of certain gambling offenses to ocean-going vessels and to the regulation and inspection of those vessels.

The motion prevailed by the following vote: Yeas 19, Nays 9.

Yeas: Armbrister, Barrientos, Brooks, Brown, Caperton, Carriker, Glasgow, Harris, Henderson, Krier, Lyon, McFarland, Montford, Parker, Santiesteban, Sims, Truan, Uribe, Whitmire.

Nays: Bivins, Edwards, Green, Haley, Leedom, Ratliff, Tejeda, Washington, Zaffirini.

Absent: Dickson, Johnson, Parmer.

The bill was read second time and was passed to third reading viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 189 ADOPTED**

Senator Henderson called from the President's table the Conference Committee Report on S.B. 189. (The Conference Committee Report having been filed with the Senate and read on Thursday, May 25, 1989.)

On motion of Senator Henderson, the Conference Committee Report was adopted viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on H.B. 1211 by a non-record vote.

The House has concurred in Senate amendments to H.B. 980 and H.B. 1738 by non-record votes.

The House has refused to concur in Senate amendments to H.B. 2721 and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Williamson, Chair; Laney, Swift, Marchant and Lucio.

The House laid S.B. 1082 on the table subject to call.

H.B. 1935, Relating to the issuance of a commercial driver's license; providing penalties.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 1935, To Committee on State Affairs.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 600**

Senator Lyon submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 600 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LYON
CAPERTON
McFARLAND
ARMBRISTER
HENDERSON

On the part of the Senate

TALLAS
HURY
CAIN
HILBERT
GUERRERO

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the authority of a public utility to self-insure against certain losses and to the consideration of those costs in determining rates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article VI, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Section 41B to read as follows:

Sec. 41B. **SELF-INSURANCE.** (a) A public utility may self-insure all or a portion of its potential liability or catastrophic property loss, including windstorm, fire, and explosion losses which could not have been reasonably anticipated and included under operating and maintenance expenses. The commission shall approve a self-insurance plan under this section if it finds that the coverage is in the public interest and the plan is a lower cost alternative to purchasing commercial insurance, considering all costs and that ratepayers will receive the benefits of that saving.

(b) In computing a utility's reasonable and necessary expenses under Subsection (c) of Section 41 of this Act, the regulatory authority shall allow as a necessary expense the funds credited to reserve accounts for the self-insurance, to the extent the regulatory authority finds it in the public interest. After the reserve account is established, the regulatory authority shall consider if the reserve account has a surplus or shortage in determining the utility's rate base. A surplus in the reserve account will exist if the charges against the reserve account are less than the funds credited to the reserve. A shortage in the reserve account will exist if the charges against the account are greater than the funds credited to the reserve. The regulatory authority shall subtract any surplus from and add any shortage to the rate base.

(c) The regulatory authority shall determine reasonableness under Subsection (b) of this section from information provided at the time the self-insurance plan and reserve account are established and upon the filing of each rate case by a utility that has such a fund and shall review the reserve on a regular and periodic basis at the expense of the utility company.

(d) The commission shall adopt rules governing self-insurance under this section.

(e) The allowance for self-insurance under this Act for ratemaking purposes will not be applicable to nuclear plant investment.

SECTION 2. This Act takes effect September 1, 1989.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 452**

Senator Krier submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 452 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

KRIER
GLASGOW
PARKER
BIVINS
WASHINGTON
On the part of the Senate

P. HILL
GIBSON
PARKER
A. SMITH
T. SMITH
On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to certain technical and other corrections and revisions to the Property Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 21.019, Property Code, is amended to read as follows:

(a) A party that files a condemnation petition may move to dismiss the proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not ~~[dismiss the condemnation proceedings merely to]~~ institute new proceedings that involve substantially the same condemnation until the expiration of three years after the date of dismissal of the prior proceedings [against the same property owner].

SECTION 2. Section 21.020, Property Code, is amended to read as follows:

Sec. 21.020. REINSTATEMENT OF CONDEMNATION PROCEEDINGS. If a condemnor moves to dismiss a condemnation proceeding and before the expiration of three years after the date of dismissal [subsequently] files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding.

SECTION 3. Subsection (a), Section 21.042, Property Code, is amended to read as follows:

(a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing. The special commissioners shall enter a finding of the amount the condemnor offered to pay to the property owner before the proceedings began.

SECTION 4. Subsection (d), Section 22.021, Property Code, is amended to read as follows:

(d) The defendant is not liable for damages under this section for injuries or for the value of the use and occupation more than two years before the date the action was filed, except that if the value of improvements by the defendant to the property exceeds the value of the use and occupation during that two-year period, the defendant is liable for damages under this section for injuries or for the value of the use and occupation that occurred before that two-year period, if any, to the extent of the excess value of the improvements [and the defendant is not liable for damages or for the value of the use and occupation in excess of the value of the improvements].

SECTION 5. Subsection (b), Section 24.0062, Property Code, as added by Chapters 314 and 745, Acts of the 70th Legislature, Regular Session, 1987, is reenacted to read as follows:

(b) If property is to be removed and stored in a public warehouse under a writ of possession, the officer executing the writ shall, at the time of execution, deliver in person to the tenant, or by first class mail to the tenant's last known address not later than 72 hours after execution of the writ if the tenant is not present, a written notice stating the complete address and telephone number of the location at which the property may be redeemed and stating that:

(1) the tenant's property is to be removed and stored by a public warehouseman under Section 24.0062 of the Property Code;

(2) the tenant may redeem any of the property, without payment of moving or storage charges, on demand during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises;

(3) within 30 days from the date of storage, the tenant may redeem any of the property described by Section 24.0062(e), Property Code, on demand by the tenant and on payment of the moving and storage charges reasonably attributable to the items being redeemed;

(4) after the 30-day period and before sale, the tenant may redeem the property on demand by the tenant and on payment of all moving and storage charges; and

(5) subject to the previously stated conditions, the warehouseman has a lien on the property to secure payment of moving and storage charges and may sell all the property to satisfy reasonable moving and storage charges after 30 days, subject to the requirements of Section 24.0062(j) of the Property Code.

SECTION 6. Subsection (b), Section 41.001, Property Code, is amended to read as follows:

(b) Encumbrances may be properly fixed on homestead property for:

(1) purchase money;

(2) taxes on the property; or

(3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.059(a), (b), and (c) [before the material is furnished or the labor is performed and in a manner required for the conveyance of a homestead, with joinder of both spouses if the homestead claimant is married].

SECTION 7. Subsection (c), Section 41.005, Property Code, as added by Chapter 727, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(c) To designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

- (1) a description sufficient to identify the property designated;
- (2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person's family or as the homestead of a single adult person not otherwise entitled to a homestead;
- (3) the name of the current record title holder [original grantee] of the property; and
- (4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.

SECTION 8. Subsections (b) and (d), Section 51.002, Property Code, are amended to read as follows:

(b) Notice of the sale, which must include a statement of the earliest time at which the sale will begin [occur], must be given at least 21 days before the date of the sale:

(1) by posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold;

(2) by filing in the office of the county clerk of each county in which the property is located a copy of the notice posted under Subdivision (1); and

(3) by the holder of the debt to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of the holder of the debt, is obligated to pay the debt.

(d) Notwithstanding any agreement to the contrary, the holder of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or contract. ~~That~~ [The] debtor must be given at least 20 days to cure the default before the entire debt is due and notice of sale is given.

SECTION 9. Chapter 51, Property Code, is amended by adding Section 51.003 to read as follows:

Sec. 51.003. DEFICIENCY JUDGMENTS. (a) If the price at which real property is sold at a nonjudicial foreclosure sale governed by Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by this section.

(b) Any person against whom such a recovery is sought by motion may request that the court in which the action is pending determine the fair market value of the real property as of the date of the foreclosure sale. The fair market value shall be determined by the court after the introduction by the parties of competent evidence of the value.

(c) If the court determines that the fair market value is greater than the sale price of the real property at the foreclosure, the persons against whom recovery of the deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no party requests the determination of fair market value or if such a request is made and no competent evidence of fair market value is introduced, the sale price at such foreclosure sale shall be used to calculate the deficiency.

(d) Any money received by a lender from private mortgage insurance shall be credited to the account of the borrower prior to bringing an action at law for any deficiency owed by the borrower.

(e) This section shall be applicable to any action to collect a deficiency resulting from a nonjudicial foreclosure of any mortgage or deed of trust conducted after June 1, 1989.

SECTION 10. Section 52.001, Property Code, is amended to read as follows:

Sec. 52.001. ESTABLISHMENT OF LIEN. A first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, if the judgment is not then dormant, constitutes a lien on the real property of the defendant located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

SECTION 11. Section 53.059, Property Code, is amended by amending Subsection (b) and by adding Subsections (f) and (g) to read as follows:

(b) The contract must be executed [entered] before the material is furnished or the labor is performed and in the manner required for the conveyance of a homestead.

(f) A contract must contain the following warning conspicuously printed, stamped, or typed, in all capital letters and underlined, in the immediate vicinity of and on the same page as the owner's signature line:

"IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(g) A violation of Subsection (f) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

SECTION 12. Subsection (a), Section 54.006, Property Code, is amended to read as follows:

(a) The person to whom rent or an advance is payable under the lease or the person's agent, attorney, assign, or other legal representative may apply to an appropriate justice of the peace for a distress warrant if the tenant:

- (1) owes any rent or an advance;
- (2) is about to abandon the premises; or
- (3) is about to remove the tenant's property from the premises.

SECTION 13. Section 54.025, Property Code, is amended to read as follows:

Sec. 54.025. DISTRESS WARRANT. The person to whom rent is payable under a building lease or the person's agent, attorney, assign, or other legal representative may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

- (1) owes rent;
- (2) is about to abandon the building; or
- (3) is about to remove the tenant's property from the building.

SECTION 14. Section 92.008, Property Code, as redesignated by Chapter 683, Acts of the 70th Legislature, Regular Session, 1987, is reenacted to read as follows:

Sec. 92.008. INTERRUPTION OF UTILITIES AND EXCLUSION OF TENANT. (a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

- (1) bona fide repairs, construction, or an emergency;
- (2) removing the contents of premises abandoned by a tenant; or
- (3) changing the door locks of a tenant who is delinquent in paying

at least part of the rent.

(c) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or the landlord's agent must:

(1) place a written notice on the tenant's front door stating the name and location of the individual from whom the new key may be obtained at any hour; and

(2) provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent.

(d) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) recover from the landlord an amount equal to the sum of his actual damages, one month's rent, and reasonable attorney's fees, less any delinquent rents or other sums for which the tenant is liable.

(e) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

SECTION 15. Section 92.158, Property Code, is amended to read as follows:

Sec. 92.158. LANDLORD'S DEFENSES. The landlord has a defense to liability under Section 92.156 if:

(1) the tenant has not fully paid all rent due from the tenant [owes rent] on the date the tenant gives a request under Subsection (a) of Section 92.153 or the notice required by Section 92.156; or

(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.154.

SECTION 16. Section 92.204, Property Code, is amended to read as follows:

Sec. 92.204. BAD FAITH VIOLATION. A landlord acts in bad faith and is liable according to this subchapter if the landlord gives an incorrect name or address under Subsection (a) of Section 92.201 by wilfully:

(1) disclosing incorrect information under Subdivision (1) or (2) of Subsection (b) of Section 92.201 [92.202]; or

(2) failing to correct information given under Subdivision (1) or (2) of Subsection (b) of Section 92.201 that the landlord knows is incorrect.

SECTION 17. Title 8, Property Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. COMMERCIAL TENANCIES

Sec. 93.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to the relationship between landlords and tenants of commercial rental property.

(b) For purposes of this chapter, "commercial rental property" means rental property that is not covered by Chapter 92.

Sec. 93.002. INTERRUPTION OF UTILITIES AND EXCLUSION OF TENANT. (a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

- (1) bona fide repairs, construction, or an emergency;
- (2) removing the contents of premises abandoned by a tenant; or

(3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.

(c) A tenant is presumed to have abandoned the premises if goods, equipment, or other property, in an amount substantial enough to indicate a probable intent to abandon the premises, is being or has been removed from the premises and the removal is not within the normal course of the tenant's business.

(d) A landlord may remove and store any property of a tenant that remains on premises that are abandoned. In addition to the landlord's other rights, the landlord may dispose of the stored property if the tenant does not claim the property within 60 days after the date the property is stored. The landlord shall deliver by certified mail to the tenant at the tenant's last known address a notice stating that the landlord may dispose of the tenant's property if the tenant does not claim the property within 60 days after the date the property is stored.

(e) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or agent must place a written notice on the tenant's front door stating the name and the address or telephone number of the individual or company from which the new key may be obtained. The new key is required to be provided only during the tenant's regular business hours and only if the tenant pays the delinquent rent.

(f) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease;
and

(2) recover from the landlord an amount equal to the sum of his actual damages, one month's rent, and reasonable attorney's fees, less any delinquent rents or other sums for which the tenant is liable.

(g) A lease supersedes this section to the extent of any conflict.

SECTION 18. (a) Section 41.005, Property Code, as added by Chapter 116, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(b) Section 91.002, Property Code, as amended by Chapter 826, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

SECTION 19. This Act takes effect September 1, 1989.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE CONCURRENT RESOLUTION 177

Senator McFarland offered the following resolution:

S.C.R. 177, Suspending the rules to allow conferees to go outside either house's version of S.J.R. 11 and to suspend printing and notice rules for the Conference Committee Report.

The resolution was read.

On motion of Senator McFarland and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider the following bills upon recess today:

H.B. 1935

H.B. 1557

SENATE RULE 11.11 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider **H.J.R. 45** upon recess today.

**NOTICE OF SESSION TO HOLD
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Sims announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Natural Resources might consider **H.B. 504** upon recess today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parmer and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Intergovernmental Relations might consider **H.B. 3066** upon recess today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Education might consider **H.C.R. 266** upon recess today.

RECESS

On motion of Senator Brooks, the Senate at 5:21 p.m. took recess until 7:00 p.m. today.

AFTER RECESS

The Senate met at 7:00 p.m. and was called to order by the President.

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Caperton submitted the following report for the Committee on Finance:

H.J.R. 45

By unanimous consent, Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 221

H.B. 3209

H.B. 1178 (Amended)

By unanimous consent, Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

C.S.H.B. 3066

By unanimous consent, Senator Santiesteban submitted the following report for the Committee on Natural Resources:

H.B. 1329

C.S.H.B. 504

**CONFERENCE COMMITTEE REPORT
SENATE BILL 783**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 783 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE
BROWN
WASHINGTON
GREEN
HENDERSON

On the part of the Senate

BARTON
POLUMBO
TURNER
SHELLEY
DANBURG

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to hearings under the fire fighters' and police officers' civil service in certain cities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 143.1015, Local Government Code, as amended by S.B. 220, Acts of the 71st Legislature, Regular Session, 1989, is amended by adding Subsections (i), (j), and (k) to read as follows:

(i) A municipal employee who is subpoenaed to appear in any appeal of a disciplinary decision is entitled to applicable pay for the time they are required to be present at the hearing. Witnesses whose testimony relates primarily to the character or reputation of the employee shall be limited by the hearing examiner or commission if the testimony is repetitious or unduly prolongs the hearing. If the hearing examiner or commission limits the number of character or reputation witnesses, additional witness statements may be presented by affidavit. The character witnesses are not entitled to applicable pay for the time they are required to be present at the hearing.

(j) In any hearing relating to the appeal or review of an action of the department head that affects a fire fighter or police officer, the department head shall have the burden of proof. The department head is required to prove the allegations contained in the written statement and the department head is restricted to the written statement and charges, which may not be amended.

(k) In an appeal to a hearing examiner the director may within five working days after the date the hearing examiner is chosen send to the hearing examiner the following:

- (1) name of the fire fighter or police officer who is appealing;
- (2) the written reasons filed by the department head with the commission in the case of a promotional passover or a recommended demotion;
- (3) the specific provisions of the rules alleged to have been violated in the case of a suspension; and
- (4) the date and place of the alleged civil service violation.

The director may not send the hearing examiner the department head's original written statement. The department head shall submit the written statement and charges to the hearing examiner at the hearing.

SECTION 2. Subchapter A, Chapter 143, Local Government Code, is amended by adding Section 143.1018 to read as follows:

Sec. 143.1018. EX PARTE COMMUNICATIONS. (a) While any matter subject to a hearing under this chapter is pending, a person may not, except in giving sworn testimony at the hearing or as otherwise provided by law, communicate with the commission, a hearing examiner, or a grievance examiner regarding the facts of the matter under consideration unless the other party or their representative is present. Notwithstanding the provisions of this subsection it shall not be a violation for either party to file written briefs or written motions in the case if copies were served on the opposing party.

(b) If the commission, hearing examiner, grievance examiner, or a court of competent jurisdiction determines that a person has violated Subsection (a) on behalf of and with the knowledge of the fire fighter or police officer who filed the appeal, request for a review, or grievance, a ruling shall be entered that dismisses the appeal, review, or grievance. If the commission, hearing examiner, grievance examiner, or a court of competent jurisdiction determines that a person violated Subsection (a) on behalf of or in favor of the department head or the department head's representative, or on behalf of and with the knowledge of a person against whom a grievance was filed, a ruling shall be entered that upholds the position of the fire fighter or police officer that filed the appeal, request for a review, or grievance.

(c) While any matter subject to a hearing under the grievance procedure of Section 143.130 is pending the director shall only send the name of the parties to the grievance, the original grievance, the written responses to the grievance, and any documents filed in the case by either party if copies were served upon the opposing party.

SECTION 3. (a) The provision of this Act relating to ex parte communications apply only to communications made on or after the effective date of this Act.

(b) The provision of this Act relating to information sent to a hearing examiner under Section 143.1015(k), Local Government Code, apply only to hearings where the hearing examiner was chosen on or after the effective date of this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
SENATE BILL 1516**

Senator Carriker submitted the following Conference Committee Report:

Austin, Texas
May 25, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1516 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARRIKER
BROOKS
TRUAN
SANTIESTEBAN
WHITMIRE

On the part of the Senate

VALIGURA
SAUNDERS
KUEMPEL
HIGHTOWER
PENNINGTON

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the storage, transportation, and disposal of used or scrap tires.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 4C to read as follows:

Sec. 4C. STORAGE, TRANSPORTATION, AND DISPOSAL OF USED OR SCRAP TIRES. (a) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

(b) A person may not store more than 350 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the department. This subsection does not apply to the storage, protection, or production of agricultural commodities.

(c) The department may register a site to store more than 350 used or scrap tires. The board of health shall adopt by rule an application form and procedures for the registration process authorized under this subsection.

(d) A person may not dispose of used or scrap tires in a facility that is not permitted by the department for that purpose.

(e) The department may issue a permit for a facility for the disposal of used or scrap tires. The board of health shall adopt by rule an application form and procedures for the permitting process authorized under this subsection.

(f) A person may not store more than 350 used or scrap tires or dispose of used or scrap tires unless the tires are shredded, split, or quartered as provided by board of health rule. The department may grant an exception to this requirement if the department finds that circumstances warrant such an exception.

(g) The department shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The department may amend, extend, transfer, or renew a permit issued under this section as provided by this Act and board of health rule.

(i) The notice and hearing procedures provided by Section 4(e)(4) of this Act apply to a permit issued, amended, extended, or renewed under this section.

(j) The department may, for good cause, revoke or amend a permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 4(e)(8) of this Act.

SECTION 2. Title 116, Revised Statutes, is amended by adding Article 6674i-1 to read as follows:

Art. 6674i-1. AWARDING OF CERTAIN CONTRACTS. (a) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

(b) If the State Department of Highways and Public Transportation uses rubberized asphalt paving, the department shall use scrap tires converted to rubberized asphalt paving by a facility in this state if that paving material is available.

(c) In comparing bids submitted for road construction that require paving, the department may give a preference to bids the paving materials portion of which includes the use of rubberized asphalt paving made from scrap tires by a facility in this state if the cost of those materials does not exceed by more than 15 percent the bid cost of alternative paving materials for the same job.

SECTION 3. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.211 to read as follows:

Sec. 3.211. PREFERENCE FOR RUBBERIZED ASPHALT PAVING. The commission may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material, if the cost does not exceed by more than 15 percent the bid cost of alternative paving materials.

SECTION 4. This Act takes effect September 1, 1989, and the provisions added by this Act relating to preferences for rubberized asphalt paving made from scrap tires apply only to bids submitted on or after that date to the State Department of Highways and Public Transportation or to the State Purchasing and General Services Commission.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT SENATE BILL 1085

Senator McFarland submitted the following Conference Committee Report:

Austin, Texas
May 23, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 1085 have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

McFARLAND
MONTFORD
PARKER
GLASGOW
HARRIS

On the part of the Senate

PERRY
McKINNEY
R. LEWIS

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the assessment, collection, allocation, and administration of certain court costs and fees in criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 102.001, Code of Criminal Procedure, is amended by amending Subsections (b) and (f) and by adding Subsection (h) to read as follows:

(b) In addition to fees provided by Subsection (a), a defendant required to pay fees under this article shall also pay 15 cents per mile for mileage required of an officer to perform a service listed in this subsection and to return from performing that service. If the service provided is the execution of a writ and the writ is directed to two or more persons or the officer executes more than one writ in a case, the defendant is required to pay only mileage actually and necessarily traveled [traveled]. In calculating mileage, the officer must use the railroad or the most practical route by private conveyance. This subsection applies to:

- (1) conveying a prisoner after conviction to the county jail;
- (2) conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county in which the warrant or capias was issued; and
- (3) traveling to execute criminal process, to summon or attach a witness, and to execute process not otherwise described by this article.

(f) ~~An officer [The clerk of a court or a county clerk] who receives fees imposed under Subsection (a)(1) of this section in a municipal court [for services performed by peace officers employed by the state] shall keep separate records of the funds collected and shall deposit the funds in the municipal treasury. The officer collecting the fees under Subsection (a)(1) or (a)(2) of this article in a justice, county, or district court shall keep separate records of the funds collected and shall deposit the funds in the county treasury [forward the fees to the comptroller of public accounts quarterly in the manner directed by the comptroller. If a fee is imposed under Subsection (a)(2) of this section for an arrest made by a peace officer employed by the state, the clerk of the court or county clerk may retain \$2 of the fee for the county and shall forward the remainder to the comptroller in the same manner as other fees are forwarded under this subsection. The comptroller shall credit funds received under this subsection to the general revenue fund].~~

(h) The custodian of a municipal or county treasury who receives fees under Subsection (a)(1) of this article for services performed by peace officers employed by the state shall remit all fees to the comptroller of public accounts in the manner directed by the comptroller. The custodian of a county treasury who receives fees under Subsection (a)(2) of this article for services performed by peace officers employed by the state may retain \$2 of the fee for the county and shall forward the remainder to the comptroller in the manner directed by the comptroller. All custodians of municipal and county treasuries who receive fees under Subsection (a)(1) or (a)(2) of this article shall keep records of the amount of funds collected that are on deposit with them and, not later than the last day of the month following each calendar quarter, shall remit to the comptroller funds collected under Subsection

(a)(1) or (a)(2) of this article during the preceding quarter in a manner directed by the comptroller. The municipality or county may retain all interest earned on those funds. The comptroller shall credit funds received under this subsection to the General Revenue Fund.

SECTION 2. Article 102.051, Code of Criminal Procedure, is amended by amending Subsection (e) and by adding Subsection (f) to read as follows:

(e) ~~[Costs imposed under this article are in addition to other court costs and are due whether or not the defendant is granted probation in the case.]~~ The officer shall collect the costs in the same manner as other costs are collected in the case.

(f) In this article, a person is considered to have been convicted in a case if:

(1) a sentence is imposed;

(2) the defendant receives probation or deferred adjudication; or

(3) the court defers final disposition of the case.

SECTION 3. Subsection (b), Article 102.054, Code of Criminal Procedure, is amended to read as follows:

(b) A [The] municipal or [and] county treasury [treasuries] may retain 10 percent of funds collected under this subchapter as a service fee for the collection and [The city or county] may also retain all interest accrued on the funds if the custodian of the treasury keeps records of the amount of funds collected under this subchapter that are on deposit with the treasury and remits the funds to the comptroller within the period prescribed in Subsection (a) of this article.

SECTION 4. Chapter 102, Code of Criminal Procedure, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. COURT COSTS AND FEES

Sec. 102.071. COLLECTION, ALLOCATION, AND ADMINISTRATION. The comptroller of public accounts may require state court costs and fees in criminal cases to be reported in lump-sum amounts. The comptroller shall allocate the amounts received to the appropriate fund, with each fund receiving the same amount of money the fund would have received if the costs and fees had been reported individually.

SECTION 5. Subsections (b) and (g), Section 56.001, Government Code, are amended to read as follows:

(b) In addition to other court costs, a person shall pay \$1 as a court cost on conviction of any criminal offense, including cases in which probation or deferred adjudication is granted or in which final disposition in the case is deferred. A conviction that arises under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), or a conviction under the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) is included, except that a conviction arising under any law that regulates pedestrians or the parking of motor vehicles is not included.

(g) The custodians of municipal and county treasuries shall keep records of the amount of funds on deposit collected under this section and shall send to the comptroller of public accounts not later than the last day of the month following each calendar quarter the funds collected under this section during the preceding quarter. A [The] municipality or county may retain as a collection fee 10 percent of the funds collected under this section and may also retain all interest accrued on the funds if the custodian of the treasury keeps records of the amount of funds on deposit collected under this section and remits the funds to the comptroller within the period prescribed in this subsection. Funds collected are subject to audit by the comptroller and funds expended are subject to audit by the state auditor.

SECTION 6. Section 415.082, Government Code, is amended by adding Subsection (c) to read as follows:

(c) In this section, a person is considered to have been convicted in a case if:

- (1) a sentence is imposed;
- (2) the defendant receives probation or deferred adjudication; or
- (3) the court defers final disposition of the case.

SECTION 7. Subsection (d), Section 415.083, Government Code, is amended to read as follows:

(d) A municipality [city] or county may retain 10 percent of the money it collects under this subchapter as a service fee and may retain all interest earned on the money if the custodian of the treasury keeps records of the amount of money collected under this subchapter that is on deposit with the treasury and remits the money to the comptroller within the period prescribed in Subsection (c) of this section.

SECTION 8. Subsection (e), Section 54.0411, Family Code, is amended to read as follows:

(e) The custodian of the county treasury may deposit the funds collected under this section in interest-bearing accounts. The custodian shall keep records of the amount of funds on deposit collected under this section and not later than the last day of the month following each calendar quarter shall send to the comptroller of public accounts the funds collected under this section during the preceding quarter. A [The] county may retain 10 percent of the funds as a service fee and may retain the interest accrued on the funds if the custodian of a county treasury keeps records of the amount of funds on deposit collected under this section and remits the funds to the comptroller within the period prescribed under this subsection.

SECTION 9. Subsections (b) and (c), Section 1C, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) In addition to the fine levied under Subsection (a) of this section, a person convicted of a violation of that subsection shall pay a sum of Seventy-five Dollars (\$75) as costs of court to be collected in addition to other taxable court costs at the same time and in the same manner as fines and other court costs. In this section, a person is considered to have been convicted in a case if:

- (1) a sentence is imposed;
- (2) the defendant receives probation or deferred adjudication; or
- (3) the court defers final disposition of the case.

(c) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under Subsection (b) of this section and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, or district court case shall keep separate records of the funds collected as costs under Subsection (b) of this section and shall deposit the funds in the county treasury. On receipt, the custodians of the municipal and county treasuries may deposit the funds collected under Subsection (b) of this section in interest-bearing accounts. The custodians shall keep records of the amount of funds on deposit collected under Subsection (b) of this section and shall on or before the last day of the month following each calendar quarter, report and remit to the Comptroller of Public Accounts ~~[ninety percent (90%) of]~~ the funds collected under Subsection (b) of this section during the preceding quarter in the same manner as fees collected under Subchapter D, Chapter 415, Government Code. ~~A municipality or [Section 9B, Chapter 546, Acts of the 59th Legislature, Regular Session, 1965 (Article 4413(29aa), Vernon's Texas Civil Statutes). Each city and]~~ county collecting funds under Subsection (b) of this section may retain ten percent (10%) of the funds collected under Subsection (b) of this section as a service fee for the collection and ~~[The city or county]~~ may also retain all interest accrued on the funds if the custodian of the treasury keeps records of the amount of funds on deposit collected under Subsection (b) of this section and remits the funds to the comptroller within the period prescribed under this subsection. All funds collected are subject

to audit by the Comptroller of Public Accounts, who is specifically authorized to adopt rules to ensure efficient and proper reporting and remitting of those funds.

SECTION 10. Subsections (b) and (c), Section 14, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) A person shall pay \$20 as a court cost on conviction of any felony, \$15 as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of more than \$200 or on conviction of a misdemeanor punishable by imprisonment or by a fine of more than \$200, and \$3 as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of not more than \$200 or on conviction of a misdemeanor punishable by a fine of not more than \$200, other than a conviction of a misdemeanor offense or a violation of a municipal ordinance relating to pedestrians and the parking of motor vehicles. The court shall assess and make a reasonable effort to collect the cost due under this section whether or not any other court cost is assessed or collected. In this section, a person is considered to have been convicted in a case if:

(1) a sentence is imposed;

(2) the defendant receives probation or deferred adjudication; or

(3) the court defers final disposition of the case. [The court shall require a person convicted of an offense listed under this section to pay the court cost whether or not the court grants the person a probated sentence. If a person is granted deferred adjudication under Article 42.12 or 45.54, Code of Criminal Procedure, at the time the court grants deferred adjudication, the person shall pay as a court cost the amount that the person would have otherwise been required to pay under this subsection had the adjudication not been deferred and had the person been finally convicted of the offense.]

(c) The custodian of a municipal or county treasury shall keep records of the amount of funds on deposit collected under this section and shall remit to the comptroller of public accounts before the last day of the month following each calendar quarter the funds collected under this section during the preceding quarter. A municipality or [The city and the] county may retain 10 percent of the funds collected under this section as a collection fee if the custodian of a municipal or county treasury keeps records of the amount of funds on deposit collected under this section and remits to the comptroller the funds within the period prescribed under this subsection. If no funds due as costs under this section have been collected in a quarter, the report required for the quarter shall be filed in the regular manner, and the report must state that no funds due under this section were collected.

SECTION 11. This Act takes effect October 1, 1989.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Montford submitted the following report for the Committee on State Affairs:

H.B. 1935

H.B. 2376

H.B. 1557 (Amended)

(Senator Brooks in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1573, Relating to the determination of income tax expense of a public utility for ratemaking purposes.

H.B. 1502, Relating to a transfer of money from the general revenue fund to the produce recovery fund.

H.B. 1671, Relating to the appointment of a county purchasing agent in certain counties.

H.B. 1698, Relating to the detachment of territory from certain school districts and to the area of a school district created by or remaining after detachment of territory from a school district.

H.B. 241, Relating to criminal penalties and civil actions for the interception of certain communications or communications signals, including stored communications, and to the use and authorization of the use of pen registers, trap and trace devices and mobile tracking devices.

H.B. 948, Relating to the penalty for charging more than twice the amount of interest allowed by State usury law.

H.B. 910, Relating to the legal interception of wire, oral or electronic communications and to offenses involving the unlawful interception, use or disclosure of those communications.

H.B. 2484, Relating to the establishment of a council on minority health affairs.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

PERMISSION FOR COMMITTEES TO MEET

On motion of Senator McFarland and by unanimous consent, permission was granted to committees to meet while the Senate was in Session.

CONFERENCE COMMITTEE ON HOUSE BILL 2335

Senator McFarland called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2335** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 2335** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators McFarland, Chairman; Dickson, Brown, Montford and Caperton.

SENATE CONCURRENT RESOLUTION 179

Senator McFarland offered the following resolution:

S.C.R. 179, Suspending rules to allow conferees to go outside either house's version of **H.B. 1588** and suspending printing and notice rules for the Conference Committee Report.

The resolution was read.

On motion of Senator McFarland and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1588

Senator McFarland called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 1588** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 1588** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators McFarland, Chairman; Sims, Bivins, Montford and Brown.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 1671, To Committee on Jurisprudence.

H.B. 1573, To Committee on State Affairs.

H.B. 1502, To Committee on Finance.

H.B. 1698, To Committee on Education.

H.B. 241, To Committee on Criminal Justice.

H.B. 2484, To Committee on Health and Human Services.

H.B. 910, To Committee on Criminal Justice.

H.B. 948, To Committee on Jurisprudence.

**CONFERENCE COMMITTEE REPORT
HOUSE BILL 3127**

Senator Sims submitted the following Conference Committee Report:

Austin, Texas
May 26, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 3127** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIMS
BIVINS
BROWN
MONTFORD
RATLIFF

On the part of the Senate

HILDERBRAN
JUNELL
JACKSON
J. HARRIS
WILLY

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.J.R. 24, Proposing a constitutional amendment providing for the issuance of general obligation bonds for acquiring, constructing or equipping corrections institutions. (As substituted)

S.J.R. 16, Proposing a constitutional amendment to permit the voters of Harris County to abolish the office of county surveyor in that county. (As substituted and amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Glasgow submitted the following report for the Committee on Jurisprudence:

H.B. 3198
H.B. 535
H.B. 2293
H.B. 707
C.S.H.B. 1758
C.S.H.B. 588

SENATE RULE 11.11 SUSPENDED

On motion of Senator McFarland and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Criminal Justice might consider the following bills today:

H.B. 241
H.B. 910

SENATE RULE 11.11 SUSPENDED

On motion of Senator Glasgow and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might consider the following bills today:

H.B. 948
H.B. 1671

SENATE RULE 11.11 SUSPENDED

On motion of Senator Edwards, on behalf of Senator Brooks, and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider H.B. 2484 today.

AT EASE

Senator Brooks, at 7:40 p.m., announced the Senate would stand At Ease until 8:00 p.m. today.

IN LEGISLATIVE SESSION

Senator Brooks, at 8:03 p.m., called the Senate to order as In Legislative Session.

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 2484

C.S.H.B. 791

By unanimous consent, Senator McFarland submitted the following report for the Committee on Criminal Justice:

H.B. 241

H.B. 910

By unanimous consent, Senator Parker submitted the following report for the Committee on Education:

H.C.R. 266

AT EASE

Senator Brooks, at 8:04 p.m., announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Brooks, at 8:20 p.m., called the Senate to order as In Legislative Session.

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Caperton submitted the following report for the Committee on Finance:

H.B. 1502

CONFERENCE COMMITTEE REPORT**SENATE BILL 24**

Senator Washington submitted the following Conference Committee Report:

Austin, Texas

May 24, 1989

Honorable William P. Hobby
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 24 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WASHINGTON
WHITMIRE
DICKSON
PARMER

On the part of the Senate

ECKELS
CHISUM
CAMPBELL

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the authority of certain counties to engage in community and economic development programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 262.024(a), Local Government Code, as amended by Senate Bill 220, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

(3) an item necessary because of unforeseen damage to public property;

(4) a personal or professional service;

(5) any work performed and paid for by the day, as the work progresses;

(6) any land or right-of-way; [or]

(7) an item that can be obtained from only one source, including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

(C) electric power, gas, water, and other utility services;

and

(D) captive replacement parts or components for equipment; or

(8) any work performed under a contract for community and economic development made by a county under Section 381.004.

SECTION 2. Section 381.002, Local Government Code, is amended to read as follows:

Sec. 381.002. ADVERTISING AND PROMOTING GROWTH AND DEVELOPMENT. (a) [This section applies only to a county with a population of more than 50,000.

(b)] If authorized by a majority vote of the qualified voters of the county voting at an election, the commissioners court of the county may appropriate from the county's general fund an amount not to exceed five cents on the \$100 assessed

valuation to advertise and promote the growth and development of the county. That money constitutes a separate fund to be known as the board of development fund and may be used only for board purposes.

(b) [(e)] In a county qualifying under this section, a board of development is created. The board shall devote its time and effort to advertising and promoting the growth and development of the county.

(c) [(d)] The board consists of five members who are appointed by the commissioners court and who serve terms of two years from the date of appointment. Members serve without compensation. Vacancies on the board shall be filled by the commissioners court in the same manner as the original appointments.

(d) [(e)] Annually, the board shall prepare and submit to the commissioners court a budget for the ensuing year in the same manner required of counties.

(e) [(f)] Subject to the approval of the commissioners court, the board may spend for personnel, rent, or materials any sum reasonably necessary to accomplish its purposes.

(f) [(g)] Before a claim against the board is presented for payment, the claim must be approved by the board. After approval of the claim, it must be presented to the commissioners court and the commissioners court shall act on it in the same manner in which it acts on any other claim against the commissioners court.

(g) [(h)] Although a county may operate under another law authorizing the appropriation of money or levy of a tax for advertising and promotion purposes, the county may not appropriate more for those purposes than the amount provided by Subsection (a) [(b)].

[(i)] ~~The authority to levy the tax provided by this section applies only to a county with a population of more than 100,000.~~

SECTION 3. Chapter 381, Local Government Code, is amended by adding Section 381.004 to read as follows:

Sec. 381.004. COMMUNITY AND ECONOMIC DEVELOPMENT PROGRAMS IN CERTAIN COUNTIES. (a) In this section:

(1) "Another entity" includes the federal government, the State of Texas, a municipality, school or other special district, finance corporation, institution of higher education, charitable or nonprofit organization, foundation, board, council, commission, or any other person.

(2) "Minority" includes blacks, Hispanics, Asian Americans, American Indians, and Alaska natives.

(3) "Minority business" means a business concern, more than 50 percent of which is owned and controlled in management and daily operations by members of one or more minorities.

(4) "Women-owned business" means a business concern, more than 50 percent of which is owned and controlled in management and daily operations by one or more women.

(b) To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program:

(1) for state or local economic development;

(2) for small or disadvantaged business development;

(3) to stimulate, encourage, and develop business location and commercial activity in the county; or

(4) to improve the extent to which women and minority businesses are awarded county contracts.

(c) The commissioners court may:

(1) contract with another entity for the administration of the program;

(2) authorize the program to be administered on the basis of county commissioner precincts;

(3) use county employees or funds for the program; and
(4) accept contributions, gifts, or other resources to develop and administer the program.

(d) A program established under this section may be designed to reasonably increase participation by minority and women-owned businesses in public contract awards by the county by establishing a contract percentage goal for those businesses.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

AT EASE

Senator Brooks, at 8:21 p.m., announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Brooks, at 8:55 p.m., called the Senate to order as In Legislative Session.

MESSAGE FROM THE HOUSE

House Chamber
May 26, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 1531, Relating to the administration and names of certain institutions and entities in The University of Texas System.

S.B. 457, Relating to higher education and the composition, continuation, and functions of the Texas Higher Education Coordinating Board. (As substituted and amended)

S.B. 498, Relating to search warrants for fire, health or building safety inspections. (As amended)

S.B. 531, Relating to the continuation and operation of the State Property Tax Board. (As amended)

S.B. 835, Relating to fees and deposits of institutions of higher learning. (As substituted)

S.B. 895, Relating to admissions to and programs at The University of Texas at Dallas. (As substituted)

S.B. 310, Relating to suits affecting the parent-child relationship and the reporting of child abuse and to the effective date of certain amendments to the Family Code. (As amended)

S.B. 388, Relating to the offense of interfering with child custody.

S.B. 424, Relating to the possession of paging devices by public school students. (As amended)

S.B. 441, Relating to the Advisory Committee on Probation Department Management to the Texas Adult Probation Commission. (As amended)

S.B. 488, Relating to the authority of the Commissioners Court of Cameron County to order road improvements and to levy assessments for that purpose.

S.B. 542, Relating to the procedure for the sale or lease of State land. (As amended)

S.B. 582, Relating to insurance claims for excessive charges; providing a criminal penalty.

S.B. 601, Relating to a study to determine the feasibility of State funding for research on the drug prolactin.

S.B. 622, Relating to mandatory continuing education for registered nurses and licensed vocational nurses. (As substituted)

S.B. 748, Relating to the offense for abandoning a child.

S.B. 788, Relating to the authority of a physician to supply drugs and other remedies free of charge to certain patients. (As amended)

S.B. 795, Relating to the practice of surveying and the election and qualifications of county surveyors; providing penalties. (As amended)

S.B. 823, Relating to the liability of persons who allow their fields to be harvested for free distribution to needy individuals and of persons who do the harvesting. (As substituted)

S.B. 838, Relating to recordkeeping requirements applicable to State agency records about license holders. (As amended)

S.B. 881, Relating to an increase in the maximum group hospital fees levied and collected from each student of The Texas A&M University System.

S.B. 957, Relating to criminal conviction checks of employees of subsidized housing for the elderly or disabled; providing a criminal penalty.

S.B. 973, Relating to the confidentiality of birth and death records maintained by the Bureau of Vital Statistics of the Texas Department of Health or by local registration officials. (As amended)

S.B. 978, Relating to the use of certain abandoned motor vehicles by a police department. (As amended)

S.B. 980, Relating to the deferral of proceedings in certain criminal cases involving misdemeanors punishable by fine only. (As substituted)

S.B. 983, Relating to the establishment and administration of a State funding program by the Office of Court Administration of the Texas Judicial System for the benefit of court-appointed volunteer advocate programs.

S.B. 992, Relating to professional achievement and proficiency certificates for law enforcement officers. (As substituted)

S.B. 1052, Relating to the screening of newborns for phenylketonuria, other heritable diseases, and hypothyroidism, and requiring insurance coverage for formulas necessary to treat heritable diseases.

S.B. 1066, Relating to the civil enforcement of certain public health, safety and welfare ordinances.

S.B. 1070, Relating to revealing the content of an appellate judicial decision or opinion.

S.B. 1095, Relating to the creation of the Centennial Scholars Matching Fund at The University of Texas Medical Branch at Galveston. (As amended)

S.B. 1133, Relating to the use of certain funds dedicated to the compensation of crime victims.

S.B. 1275, Relating to prejudgment interest in condemnation cases.

S.B. 1322, Relating to rights and procedures governing the provision of services to persons with mental illness; providing a civil penalty. (As substituted)

S.B. 1362, Relating to the payment of compensatory per diem to members of advisory committees for the Texas Board of Health and the Texas Department of Health.

S.B. 1387, Relating to the structure, powers and duties of the Texas Hospital Equipment Financing Council and to the duties of the State treasurer in relation to the financing council.

S.B. 1397, Relating to inquests and autopsies regarding the body of a prospective organ donor.

S.B. 1419, Relating to the liability of certain homeowners organizations and the volunteers and employees of the organizations.

S.B. 1451, Relating to the imposition of a fee on bonds in criminal cases and the creation of the crime stoppers assistance fund in the State treasury.

S.B. 1484, Relating to the days and hours for conducting absentee voting by personal appearance in certain elections. (As substituted and amended)

S.B. 1527, Relating to the establishment of an office for the prevention of developmental disabilities. (As substituted)

S.B. 1533, Relating to involuntary civil commitment procedures for alcoholics, mentally ill persons and drug-dependent persons. (As substituted and amended)

S.B. 1564, Relating to the administration and management of certain courts; the powers, assignment and retirement of certain judges; and candidates for certain judicial offices. (As amended)

S.B. 1629, Relating to the purchase of estate property by the personal representative of the estate.

S.B. 1643, Relating to agreements between spouses regarding rights of survivorship in community property.

S.B. 1669, Relating to the creation of the County Court at Law of San Patricio County and to the service of the judge of that court on the county juvenile board. (As amended)

S.B. 1677, Relating to the creation of offenses for delivery, sale or manufacture of inhalant paraphernalia used with volatile chemicals, abusable glues or aerosol paints and to the monitoring and enforcing of regulations relating to volatile chemicals, abusable glues and aerosol paints. (As amended)

S.B. 1701, Relating to a facility use fee charged and collected from students at Tarleton State University. (As amended)

S.B. 1711, Relating to sexual assault prevention and crisis services.

S.B. 1731, Relating to the membership of the State committee for purchases of products and services of blind and severely disabled persons.

S.B. 1757, Relating to utility audits or evaluations required by the public utility commission. (As substituted)

S.B. 1761, Relating to the investment and use of money of the veterans land fund and the veterans' housing assistance fund.

S.B. 1770, Relating to the statutory probate courts in Harris County. (As amended)

S.B. 1785, Relating to the Texas Natural Death Act.

S.B. 1794, Relating to the terms of directors of the Port of Port Arthur Navigation District.

S.B. 1814, Relating to the identification, possession and unlawful use of certain containers; providing a penalty.

S.B. 1840, Relating to the exchange of certain State-owned land and to the granting of a patent.

H.B. 2964, Relating to the licensing and regulation of bail bondsmen.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Glasgow submitted the following report for the Committee on Jurisprudence:

H.B. 1671

H.B. 948 (Amended)

HOUSE BILL ON FIRST READING

The following bill received from the House was read first time and referred to the Committee indicated:

H.B. 2964, To Committee on Criminal Justice.

AT EASE

Senator Brooks, at 8:58 p.m., announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Brooks, at 9:04 p.m., called the Senate to order as In Legislative Session.

CONFERENCE COMMITTEE ON HOUSE BILL 526

Senator Carriker called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 526** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 526** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chairman; Washington, Brown, McFarland and Sims.

MEMORIAL RESOLUTIONS

H.C.R. 218 - (Caperton): In memory of Arnold J. Crell of Houston County.

S.R. 765 - By Truan: In memory of Jesus "Cantinflitas" Chavez, Jr., of Corpus Christi.

CONGRATULATORY RESOLUTIONS

H.C.R. 178 - (Washington): Commending Southwest Airlines for its exceptional service to the Ronald McDonald House program.

H.C.R. 221 - (McFarland): Designating September 24, 1989, as United States Marshals Bicentennial Day in Texas.

H.C.R. 223 - (Lyon): Extending congratulations to Dr. Jack L. Davidson on receiving the Executive Educator 100 award.

H.C.R. 278 - (Dickson): Designating October, 1989, to be Texas Society of Architects Month.

H.C.R. 279 - (Sims): Honoring the International Boundary and Water Commission as it celebrates its 100th anniversary.

H.C.R. 280 - (Green): Commending Jim Trammel on his outstanding contributions to education.

H.C.R. 288 - (Edwards): Commending the 143rd Infantry Regiment for its service to the State of Texas and the United States of America.

H.C.R. 300 - (Truan): Designating Corpus Christi as the official city of the state celebration of the Quincentennial of Columbus's discovery of America.

S.R. 762 - By Tejeda: Commending Colonel Leslie A. Hobgood for his faithful and dedicated service to his country and expressing sincere appreciation to him for his exemplary record of military service.

S.R. 767 - By Edwards: Commending all those involved in "A Weekend To Wipe Out Cancer."

RECESS

On motion of Senator Bivins, the Senate at 9:06 p.m. recessed until 8:00 a.m. tomorrow.

APPENDIX

Signed by Governor
(May 25, 1989)

S.C.R. 82
S.C.R. 169
H.C.R. 277
H.C.R. 209
H.C.R. 200
H.C.R. 143
H.C.R. 129
H.C.R. 13

S.B. 886 (Effective immediately)
S.B. 1045 (Effective September 1, 1989)
H.B. 112 (Effective August 28, 1989)
H.B. 162 (Effective September 1, 1989)
H.B. 163 (Effective January 1, 1990)
H.B. 202 (Effective immediately)
H.B. 204 (Effective September 1, 1989)
H.B. 541 (Effective September 1, 1989)
H.B. 602 (Effective immediately)
H.B. 625 (Effective immediately)
H.B. 660 (Effective September 1, 1989)
H.B. 772 (Effective September 1, 1989)
H.B. 800 (Effective August 28, 1989)
H.B. 1010 (Effective September 1, 1989)
H.B. 1051 (Effective immediately)
H.B. 1077 (Effective immediately)
H.B. 1155 (Effective September 1, 1989)
H.B. 1212 (Effective September 1, 1989)
H.B. 1243 (Effective September 1, 1989)
H.B. 1359 (Effective September 1, 1989)
H.B. 1407 (Effective August 28, 1989)
H.B. 1558 (Effective immediately)
H.B. 1632 (Effective immediately)
H.B. 1700 (Effective immediately)
H.B. 1841 (Effective August 28, 1989)
H.B. 2058 (Effective immediately)
S.B. 63 (Effective September 1, 1989)
S.B. 73 (Effective September 1, 1989)
S.B. 152 (Effective immediately)
S.B. 499 (Effective immediately)
S.B. 537 (Effective immediately)
S.B. 540 (Effective immediately)
S.B. 571 (Effective September 1, 1989)
S.B. 689 (Effective immediately)
S.B. 716 (Effective immediately)
S.B. 784 (Effective immediately)
S.B. 793 (Effective September 1, 1989)
S.B. 794 (Effective September 1, 1989)
S.B. 815 (Effective immediately)
S.B. 898 (Effective immediately)
S.B. 899 (Effective immediately)
S.B. 938 (Effective immediately)
S.B. 950 (Effective September 1, 1989)
S.B. 1049 (Effective immediately)
S.B. 1115 (Effective September 1, 1989)
S.B. 1223 (Effective June 30, 1989)
S.B. 1350 (Effective immediately)

Signed by Governor
(May 26, 1989)

H.B. 85 (Effective September 1, 1989)

Sent to Governor
(May 26, 1989)

S.C.R. 66	S.B. 544	S.B. 1037	S.B. 1501
S.C.R. 70	S.B. 546	S.B. 1039	S.B. 1521
S.C.R. 132	S.B. 567	S.B. 1076	S.B. 1522
S.C.R. 167	S.B. 597	S.B. 1091	S.B. 1526
S.B. 8	S.B. 612	S.B. 1098	S.B. 1568
S.B. 48	S.B. 697	S.B. 1112	S.B. 1569
S.B. 64	S.B. 754	S.B. 1116	S.B. 1573
S.B. 88	S.B. 786	S.B. 1148	S.B. 1585
S.B. 104	S.B. 836	S.B. 1156	S.B. 1588
S.B. 134	S.B. 842	S.B. 1173	S.B. 1599
S.B. 177	S.B. 844	S.B. 1175	S.B. 1601
S.B. 179	S.B. 865	S.B. 1191	S.B. 1611
S.B. 199	S.B. 874	S.B. 1248	S.B. 1628
S.B. 247	S.B. 896	S.B. 1284	S.B. 1632
S.B. 252	S.B. 920	S.B. 1285	S.B. 1644
S.B. 276	S.B. 937	S.B. 1287	S.B. 1665
S.B. 277	S.B. 946	S.B. 1302	S.B. 1673
S.B. 371	S.B. 949	S.B. 1345	S.B. 1685
S.B. 379	S.B. 963	S.B. 1357	S.B. 1692
S.B. 405	S.B. 981	S.B. 1359	S.B. 1695
S.B. 512	S.B. 1006	S.B. 1453	S.B. 1713
S.B. 519	S.B. 1027	S.B. 1500	S.B. 1774
			S.B. 1791

SEVENTY-FOURTH DAY

(Continued)

(Saturday, May 27, 1989)

AFTER RECESS

The Senate met at 8:00 a.m. and was called to order by Senator Sims.

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Sims in Chair) announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

Pursuant to Senate Rule 9.03(d), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time and passed: (Vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill.)

S.R. 699 (Uribe) Directing the Natural Resources Subcommittee on Water to conduct a study on maquiladora expansion. (vv)

H.C.R. 16 (Dickson) Requesting that educational curricula for judges and law enforcement officers include information about certain procedures and services regarding mentally ill persons. (vv)

C.S.H.C.R. 29 (Carriker) Urging the State Board of Education to include suicide prevention and intervention among subject areas for teacher inservice training. (vv)